

# General Terms and Conditions of Supply

## of Gross & Perthun GmbH & Co KG. - Issue of July 2011

### 1. Sphere of application

Solely our General Terms and Conditions of Delivery and Sale set out below apply to any deliveries we carry out or services we render for entrepreneurs within the meaning of Section 14 BGB (German Civil Code). General terms and conditions of business to the contrary or those that vary from our conditions shall not become an integral part of the contract, including if we do not expressly reject them.

### 2. Offer, formation of contract, content of contract

2.1 Our offers shall be non-binding. A contract shall come into existence when we confirm the order in writing. Our written confirmation of order shall be decisive for the content and scope of the contract.

2.2 Alterations in the technical design of ordered goods shall be permissible insofar as this does not cause major change to the function and insofar as the customer does not prove that such an alteration cannot reasonably be accepted by him.

2.3 A contract shall be brought about subject to the correct and timely delivery by our suppliers. Events (such as force majeure, war, strikes, industrial unrest, failure to provide means of transport, misconduct on the part of persons accompanying lorry transport operations etc.) that render the deliveries impossible or delay them, shall release us from the delivery and entitle us to postpone the delivery in terms of time. In such a case any kind of compensation for damages are excluded. In such a case we shall be entitled to withdraw from the contract.

2.4 Details regarding the delivery item or subject matter of performance (e.g. measurements, other values, load-carrying performance, tolerance and technical details) and the presentation of these (e.g. drawings and diagrams) shall only be deemed authoritative insofar as the intended use as per agreement is predicated on precise correspondence. They do not constitute any kind of guarantee or quality features, but rather describe or identify the delivery or performance. Technical alterations are reserved as part of action that is acceptable to the other party. Documents pertaining to the offer such as diagrams, drawings, weights and measurements are merely approximate values insofar as they are not expressly described as binding. Customary variations that apply as a result of legal requirements or technical improvements and the replacement of components with equivalent components are permitted insofar as they do not have a detrimental effect on the use for the purpose as set out in the agreement. Quantity variations are permitted within a range of an additional quantity of 10 % and a shortfall quantity of 5 %, and do not constitute any kind of faulty delivery.

2.5 We reserve ownership rights, copyright and other industrial proprietary rights to all diagrams, calculations, drawings and other documents. The buyer may only forward these to third-parties following our written approval irrespective of whether or not we have marked these as confidential. We shall guarantee the quality or durability of an object only if this has been promised expressly in our confirmation of order or in our advertising.

### 3. Prices, price changes, packing

3.1 Insofar as nothing different is agreed, our prices shall apply ex warehouse including loading but exclusive of packing, freight, insurance and the legally applicable VAT. These items shall be charged separately.

3.2 We reserve the right to alter our prices correspondingly if, after formation of the contract, there are cost reductions or cost increases, in particular on account of wage agreements or material price changes. If prices are increased, the purchaser shall be entitled to withdraw from the contract by written declaration within 7 days after receipt of the communication relating to the price increase.

3.3 We are entitled to amend prices if the period between entering into the contract and the agreed delivery date is longer than four months. If the wages, material costs or the market purchase prices increase after the contract is entered into up until completion or carrying out the delivery, we shall be entitled to increase the price in line with the cost increase. The buyer shall be informed of this without delay in writing. In such a case the buyer shall be entitled, within seven days following receipt of the notification of the price increase, to withdraw from the contract by way of a written declaration.

3.4 If the delivery is made in loan containers, they must be sent back to us within 90 days after receipt of the delivery, empty of residue and carriage paid. Costs of loss or damage to loaned packaging shall be paid by the customer if he is responsible for this. Loaned packaging must not be used for purposes other than transport of the delivered goods or for taking up other products. Inscriptions or labeling must not be removed.

3.5 Non-returnable packaging shall not be taken back by us. We shall notify the customer of a third party who can convey the packaging to a place of recycling in compliance with the *Verpackungsverordnung* (packaging ordinance).

### 4. Terms of payment

4.1 Our invoices shall be due for payment net within 30 days after delivery unless any different regulation has been agreed.

4.2 Checks and bills shall only be accepted on the basis of special agreements and only by way of provisional performance and subject to their being discountable. Costs and expenses shall be paid by the customer. The credit shall ensue on the day when we have free access to the proceeds.

4.3 If the purchase is in delay with payment, we shall be entitled to call due immediately all claims from the whole business relationship. In such a case, agreements on reductions, discounts, price concessions etc. shall cease to apply.

4.4 If the buyer discontinues its payments, if it defaults in payment, if it is over-indebted or an application has been filed for the institution of insolvency proceedings, or if the buyer defaults in cashing due bills of exchange or cheques, our total receivables shall immediately fall due for payment. The same applies in the event of other significant deterioration in the buyer's economic circumstances. In such cases we shall be entitled to request the provision of adequate security or withdraw from the contract and claim compensation for damages. In such a case trade discount agreements, discounts and price reductions etc. shall be deemed forfeited.

4.5 Setting off or retention on the part of the buyer is excluded unless the claims for setting off or retention are undisputed or have become res judicata.

4.6 If partial deliveries are permissible because they are agreed or because the customer can reasonably be expected to accept them, we shall be entitled to raise a separate invoice for every partial delivery which shall then be payable in accordance with the above conditions.

### 5. Period of delivery

5.1 Adherence to the agreed period of delivery requires that all business and technical issues be clarified and that the customer has fulfilled his obligations correctly and punctually.

5.2 If the customer is in delay with acceptance or if he breaches other duties of co-operation in a culpable manner, we shall be entitled to demand compensation for any loss incurred by us in this way including any additional expenses. In such a case we shall also be entitled, depending on our choice, to dispatch, at the cost of the customer, the goods that are ready for dispatch or if necessary to store them in the open air in a correct manner. We reserve the right to assert further claims.

5.3 If the customer is in delay with acceptance, the goods that are ready for dispatch may be invoiced.

5.4 If non-compliance with the period of delivery is due to force majeure, industrial disputes or other events that are outside our sphere of influence or for which we are not responsible, the period of delivery shall be extended appropriately. In such a case we shall notify the customer of the start and end of such circumstances as soon as possible. If in such cases delivery is delayed by more than one month and the hindrance to delivery cannot be overcome by reasonable endeavors, we and the customer shall be entitled, with exclusion of compensation claims, to withdraw from the contract with regard to the quantity to which their disruption of supply relates.

5.5 If we are in delay with delivery and the customer incurs loss due to this, he shall be entitled to demand a lump-sum compensation for delay. This shall amount to 0.5% for each full week of delay, the maximum being 5% of the value at the part of the overall delivery which on account of the delay cannot be used in time or cannot be used in accordance with the contract. The customer's right to declare withdrawal from the contract if the statutory requirements for this are fulfilled shall remain unaffected. Further claims based on delayed delivery shall be excluded insofar as there is no transaction that is bound to a fixed date and insofar as there is no cessation of interest in fulfilment of the contract.

### 6. Transfer of risk, acceptance

6.1 The risk shall transfer to the customer when the object supplied has left the works even if part deliveries are made or the supplier has promised other performances such as delivery or setting up or payment of dispatch costs. Insofar as an acceptance is necessary, this shall be decisive for transfer of risk. It must ensue immediately on the date for acceptance or after the notification by the supplier concerning readiness for acceptance. The customer must not refuse acceptance on account of a minor defect.

6.2 If dispatch or acceptance is delayed or does not take place at all for reasons not attributable to us, the risk shall transfer to the customer from the date of notification of readiness for or dispatch or readiness for acceptance. In this case we shall be entitled to insure the goods and charge the costs for this to the customer.

### 7. Reservation of ownership

7.1 Our deliveries always involve reservation of ownership. The goods shall remain our property until full payment of all claims from the business relationship with the customer. In the case of an open account, reserved ownership shall serve as security for the outstanding balance due to us.

7.2 The customer shall be entitled to sell on the supplied goods within the framework of his proper business procedure. He must not pledge the reserved goods or assign them as collateral.

7.3 In case the goods are sold on, the customer assigns to us already now all claims with all ancillary rights that are due to him from the sale. This shall apply irrespective of whether he sells the reserved goods without processing them or after treatment or processing or in combination with other objects. If the sale takes place together with goods that do not belong to us, the assignment shall take place only to the value of the reserved goods. The value shall be measured according to our selling prices.

7.4 Treatment and processing of reserved goods shall only ever be done for an as a manufacturer in terms of 950 BGB (German Civil Code) but without creating any obligation for us. The processed goods shall count as reserved goods as specified by the conditions. If reserved goods are processed or combined inseparably with objects not belonging to us, we shall acquire co-ownership of the object at the ratio of the invoiced value of the reserved goods to the invoiced value of the other goods used at the time of processing or combining. The co-ownership rights that arise in this way shall count as reserved goods as specified by these conditions. Upon request by us the customer shall be required to notify the purchaser of the reserved goods of our ownership rights. Otherwise, in respect of the object brought about by processing or combining, the same shall apply as for the object supplied under reservation.

7.5 The customer is authorized to collect the claims from their sale, notwithstanding our own right of collection. As long as the customer complies with his payment obligations correctly, we shall not assert the claim ourselves. Upon request by us, the customer must disclose to us the debtors to whom the assigned claims relate and notify them of the assignment. Our right to notify the assignment to the third-party debtors ourselves shall not be affected by this. The customer is not allowed to assign claims against third-party debtors to other third parties or to agree a prohibition of assignment with third-party debtors.

7.6 The customer shall be required to treat the purchased object with care; in particular he shall be required to take out, at his own cost adequate insurance for it at the nominal value against theft and damage. The customer assigns to us his claims from the insurance policies.

7.7 The customer shall be required to inform us immediately by the fastest method of any seizure or other infringement of our security interests by third parties. The customer shall be required to give us all documentation necessary to safeguard our rights and to reimburse us for costs brought about by a necessary intervention.

7.8 If the realizable value of the security exceeds our claims by more than 10%, we shall, upon request by the customer, release seaway to that extent based on our choice.

7.9 If the customer defaults in its obligation to pay or in respect of cashing due bills of exchange or cheques in full or in part, if it is over-indebted or has discontinued its payments or if an application for the institution of composition or insolvency proceedings has been filed, we shall be entitled to take possession of all reserved goods immediately. Likewise we may immediately assert additional rights resulting from the reservation of title. The same applies in the event of other significant deterioration in the buyer's economic circumstances. The buyer grants us, or parties authorized by us, during business hours, access to all its business premises.

### 8. Guarantee, notification of defects, period of limitation

8.1 The customer must examine the goods received immediately after receipt. Notifications of defects must be made by the customer in writing immediately after receipt of the goods and at the latest within 14 days after receipt. In respect of hidden defects the same period shall apply but starting from the time of discovery. Guarantee claims shall not be valid for defects not notified in time. The customer must specify precisely the type and extent of defects.

8.2 In the case of justified complaints there shall be a subsequent rectification or replacement delivery depending on our choice. If we do not rectify the defect or provide a replacement within a reasonable period, the customer shall have the right to withdraw from the contract or to demand a reduction in the purchase price. Withdrawal shall not be possible if there has been only an insignificant breach of duty on our part.

8.3 In the case of justified notification of defects, the buyer may only retain payments to an extent that is reasonably proportionate to the identified material defects. If notification of defects proves to be wrong, we shall be entitled to request that the buyer compensate us for the expenses incurred.

8.4 As a general rule, further-reaching claims by the buyer, in particular regarding consequential damage, are excluded. This does not apply in the case of intent, gross negligence or violation of key contractual obligations or in the event of the loss of life, physical injury or detrimental effects on health. This does not affect the buyer's right to withdraw from the contract.

8.5 In the case of entrepreneur's recourse, the customer shall have the rights of § 437 BGB (German Civil Code) with the exception of the entitlement to compensation. The period of limitation shall be geared to § 479 BGB.

8.6 The period of limitation for guarantee claims shall begin from the time of delivery of the object and it shall be: 1 year in the case of the supply of other new goods to businesses.

8.7 There shall be no guarantee claims in particular for defects that occur after transfer of risk due to unsuitable or improper use, faulty assembly or commissioning by the customer or third parties, inadmissible mode of operation, natural wear and tear, improper maintenance, unsuitable operating resources, defective construction works, defective foundation ground or on account of external influences not anticipated in the contract and for non-reproducible software errors. If the customer or a third-party carries out improvement works improperly, we shall have no liability for the consequences. The same shall apply for any alteration to the supplied object without our prior consent.

### 9. Limitation of liability

9.1 In the case of injury to life, limb or health we shall be liable in accordance with the statutory provisions.

9.2 The following shall apply for other loss or damage.

9.2.1 For loss or damage caused intentionally or through grossly negligent breach of duty by us or our statutory representatives or vicarious agents we shall be liable in accordance with the statutory provisions.

9.2.2 For loss or damage caused by breach of fundamental contractual obligations due to ordinary negligence by us, our statutory representatives or vicarious agents the liability shall be limited to the loss or damage that is foreseeable and typical for the type of contract.

9.2.3 Compensation claims for other loss or damage in the case of breach of secondary duties or non-fundamental duties with ordinary negligence shall be excluded.

9.2.4 The liability exclusions or restrictions shall not apply insofar as we have concealed a defect in a deceitful manner or if we have provided a guarantee for the quality of the object.

9.3 This does not affect the buyer's claims for reimbursement of expenses incurred in vain in the place of compensation instead of performance or the liability in accordance with the product liability act. Further-reaching liability that extends above and beyond claims for damages - irrespective of the legal nature of the asserted claim - is excluded. This applies, in particular, to claims for damages resulting from culpability in the case of entering into a contract, other violations of obligations or regarding real claims for compensation of material damage in accordance with Section 823 BGB. This also applies insofar as the buyer requests reimbursement of expenses incurred in vain instead of a claim for compensation for damages instead of performance.

9.4 Our products have a diverse spectrum of applications. If the customer intends to use our products in a way or for a purpose not specified expressly in our product documentation or for a purpose for which we have declared a separate written approval, the customer must test the suitability for the intended purpose in his own experiments. Liability on our part shall be excluded.

### 10. Prohibition of assignment

The customer is not entitled to assign to third parties rights from contracts formed with us without EU agreement.

### 11. Applicable law, place of performance, place of jurisdiction

11.1 German law shall apply exclusively; applicability of the United Nations Convention on Contracts for the International Sale of Goods shall be excluded.

11.2 The place of performance for all liabilities from contracts formed by us with the customer shall be the relevant dispatch point. For payments it shall be our principal place of business.

11.3 The place of jurisdiction shall be Mannheim. However, we shall also be entitled to bring an action against the customer at his registered office.