

# General Terms and Conditions of Supply

## of Gross & Perthun GmbH & Co KG. - Issue of December 2006

### 1. Sphere of application

Our general terms and conditions of supply set out below shall apply exclusively for all deliveries and services rendered by us including those rendered in the future. Any conflicting general terms of business of the customer or general terms of business of the customer that differ from our terms shall not become an element of the contract even 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 a 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 Quantity variations shall be permissible within a framework of an additional quantity of 10% or an under-quantity of 5% and they shall not be deemed to constitute defective delivery.

2.4 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 If a new price list comes into effect between formation of contract and delivery in the case of contracts with an agreed period of delivery of more than four months, we shall be entitled to charge the price applicable on the day of delivery.

3.4 If we have to meet the cost of taxes, duties or similar expenses associated with deliveries abroad or if, after formation of contract, fees or fiscal charges, especially duties or taxes, are introduced or increased, they shall be paid additionally by the customer.

3.5 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 labelling must not be removed.

3.6 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 purchaser 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 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.

4.5 If we discover facts that indicate financial difficulties on the part of the customer or which call into question his credit-standing, we shall be entitled to suspend outstanding deliveries from all existing contracts with the customer or to execute them only against advance payment or provision of security. If the customer does not comply with such a demand within a reasonable period, we shall be entitled to withdraw fully or partially from the contract and to demand compensation.

4.6 The customer shall only be entitled to offset claims with their own claims if the latter have become *res judicata* or if they are undisputed.

4.7 The customer shall only be entitled to exercise a right to refuse performance if his counterclaim is based on the same contractual relationship.

### 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 despatch 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 endeavours, 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 of 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 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 us 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 authorised 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.

7.7 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.

7.8 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.

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

7.10 If the customer acts in breach of the contract, in particular in the case of delayed payment, we shall be entitled to withdraw from the contract and to retrieve the objects supplied with reservation of ownership and the customer shall be required to surrender the goods.

### 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 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.

8.4 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.

8.5 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 The customer's claims for reimbursement of unsuccessful expenses instead of compensation in place of performance and the liability in accordance with the *Produkthaftungsgesetz* (Product Liability Law) shall remain unaffected.

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 our 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.

**Gross & Perthun GmbH & Co. KG**  
**Lackfabrik · Industriestraße 12 – 14 · D-68169 Mannheim**