

# General Terms of Sale Jowat AG, Detmold

## Article 1 General Terms - Area of Application

- 1.1 Our Terms of Sale apply exclusively; we do not acknowledge any terms of the Buyer which differ from or conflict with our Terms of Sale, unless we have expressly confirmed their application in writing. Our Terms of Sale are also valid in the event that we undertake delivery to the Buyer without attaching conditions in the knowledge that the terms of the Buyer differ from or conflict with our Terms of Sale.
- 1.2 All agreements made between us and the Buyer for performance of the contract which has come into being through our order confirmation or by other means, are recorded in writing in these Terms of Sale and in the order confirmation.
- 1.3 Our Terms of Sale only apply to companies, legal entities under public law and/or public law special funds as defined in § 310(1) Civil Code (BGB).
- 1.4 Our Terms of Sale also apply to all future business transactions with the Buyer.

## Article 2 Offers - Quotation Documents

- 2.1 If the order qualifies as an offer under § 145 Civil Code (BGB), we have the right to accept this offer within 2 weeks.
- 2.2 We reserve all rights of title and copyrights to all documentation we have supplied. This also applies to any written documents described as "confidential". These may not be forwarded to third parties without our express written consent.

## Article 3 Prices - Terms of Payment

- 3.1 Unless otherwise specified in the order confirmation, our prices apply "ex works" including packaging. We reserve the right to modify prices reasonably if, after conclusion of the contract, reductions or increases of costs occur, in particular as a result of collective bargaining agreements or material price increases. We shall provide proof of this to the Buyer upon request.
- 3.2 Our prices do not include the statutory rate of VAT; it will be shown separately on the invoice on the invoice issue date.
- 3.3 No discount may be deducted unless agreed in writing.
- 3.4 Unless otherwise agreed in the order confirmation, the selling price is due for payment net (without deductions) within 30 days of date of invoice. Payments must be made in Euro and transferred to the bank we have indicated without deductions and free of charges or costs. Determinant for the punctuality of payment is the date on which the amount has been unconditionally credited to our account. The statutory regulations regarding the consequences of late payment apply.
- 3.5 The Buyer has rights of set-off only if his counter-claims have been judicially confirmed as final and non-appealable or are undisputed or acknowledged by us. He is entitled to exercise rights of retention only if his claim is based on the same contractual relationship.

## Article 4 Delivery Period

- 4.1 The start of the delivery period indicated by us is conditional upon the prior clarification of all technical matters.
- 4.2 Compliance with our delivery obligation also requires that a Buyer has duly fulfilled his obligation in due time. We reserve the defence of non performance of the contract.
- 4.3 If the Buyer is in default with acceptance, or if he is at fault for breach of other duties of cooperation, we are entitled to claim compensation for any damages we have suffered in this respect, including the refund of any extra expenses. We reserve the right to bring higher claims.
- 4.4 If the requirements of (3) are satisfied, the risk of accidental loss or accidental deterioration of the goods for sale passes to the Buyer at the time when he is in default with acceptance or in debtor's default.
- 4.5 We are entitled to fulfil contractual obligations after the scheduled date if the Buyer has been informed that the deadline will be exceeded and has been notified of a period for subsequent performance, unless subsequent performance is unacceptable to the Buyer, or the Buyer rejects the offer of subsequent performance within a reasonable period of time. In the event of subsequent performance, we shall refund any verified extra costs necessarily incurred by the Buyer as a consequence of the delay in performance, insofar as we are liable for damages under the stipulations of Articles 6 and 7.
- 4.6 We are liable under the statutory provisions if the underlying contract of sale was a fixed transaction for the purposes of § 286(2) no. 4 Civil Code (BGB), or § 376 Commercial Code (HGB). We are also liable under the statutory provisions in the event that the Buyer is entitled to claim that he has ceased to have an interest in the continued performance of the contract as a consequence of the default in delivery for which we are responsible.
- 4.7 We are also liable under the statutory provisions if the default in delivery is due to an intentional or grossly negligent breach of contract for which we are responsible; any fault on the part of our representatives or agents is attributable to us. If default in delivery is not based on a deliberate breach of contract for which we are responsible, our liability to compensate damages is limited to the foreseeable and typically occurring damages.
- 4.8 We are also liable under the statutory provisions if the default in delivery for which we are responsible is based on the deliberate breach of an essential contractual duty; in this case our liability to compensate damages is limited to the foreseeable and typically occurring damages.
- 4.9 All other statutory claims and rights of the Buyer are preserved.

## Article 5 Passing of the Risk - Packaging Costs

- 5.1 Unless otherwise stipulated in the order confirmation, delivery is agreed "ex works".
- 5.2 Any return of packaging material is subject to specific prior agreement.
- 5.3 At the request of the Buyer, we shall insure the consignment against transport damage; the costs incurred in this respect are paid by the Buyer.

## Article 6 Liability for Defects

- 6.1 Claims of the Buyer based on defects are dependent on the Buyer duly undertaking the duties of examination and notice of complaint under § 377 Commercial Code (HGB). If possible, these complaints must be submitted before the goods enter regular processing. Each notice of complaint must be accompanied by a sample of the goods complained of. Neither our employees, commercial representatives or other sales agents are authorised to accept complaints or make statements on warranty.
- 6.2 If the goods sold are found to be deficient, we are entitled at our discretion either to undertake subsequent performance by eliminating the defect, or to deliver a new and flawless product. In the event of elimination of the defect, we are obligated to pay any expenses required for elimination of the defect, in particular cost of transport, travelling expenses, labour costs and materials, provided that these are not increased by the fact that the goods sold have been taken to a place other than the place of performance.
- 6.3 If subsequent performance is unsuccessful, the Buyer has the choice to withdraw from the contract or request a reduction in price.
- 6.4 We are liable under the statutory provisions if the Buyer brings claims for compensation for damages based on intent or gross negligence, including intent or gross negligence on the part of one of our representatives or agents. Unless we are claimed to be in deliberate breach of contract, our liability to compensate damages is limited to the foreseeable and typically occurring damages.
- 6.5 We are liable under the statutory provisions if we are at fault for a breach of an essential contractual duty; in this case, however, our liability to compensate for damages is limited to the foreseeable and typically occurring damages.
- 6.6 If the Buyer has a right to compensation of damages in lieu of performance, our liability is limited, also within the limits of (3), to compensation for the foreseeable and typically occurring damages.

- 6.7 This does not affect our liability for any harm to life, bodily injury, or harm to health for which we are at fault; the same applies to the mandatory liability under the Product Liability Act.
- 6.8 Unless otherwise agreed above, our liability is excluded.
- 6.9 The limitation period for claims based on defects is 12 months counted from the date of passing of the risk.
- 6.10 This does not affect the limitation period in the event of recourse to the supplier under § 478 and § 479 Civil Code (BGB); this period is five years from the date of delivery of the defective goods at the Buyer.
- 6.11 In case of an unjustified complaint, Jowat is entitled to charge the customer with a flat fee of € 150 for laboratory and administrative work. The customer has the right to furnish proof that the value of the damage was lower or that it did not occur at all. The flat fee will then be reduced accordingly. In all cases, Jowat is entitled to furnish proof of higher damage.

## Article 7 Joint and Several Liability

- 7.1 Any liability for compensation for damages going beyond that of Article 6 is excluded, regardless of the legal nature of the claim raised. This applies in particular to claims for compensation of damages based on culpa in contrahendo, for other breaches of duties or for claims in tort for compensation of damage to property under § 823 Civil Code (BGB).
- 7.2 Where liability for compensation for damages on our part is excluded or limited, this shall apply equally to the personal liability of our employees, representatives and agents.

## Article 8 Reservation of Title

- 8.1 We reserve title to the goods sold until receipt of all payments arising from the business relations. In the event of conduct in breach of contract by the Buyer, in particular in the event of default in payment, we are entitled to recover the goods sold. Our recovery of the goods sold does not constitute any withdrawal from the contract, unless we expressly declare the same in writing. If we attach the goods sold, this always constitutes a withdrawal from the contract. After recovering the goods sold, we are entitled to sell them, the proceeds of sale must be applied to the liabilities of the Buyer – less any reasonable costs of sale.
- 8.2 The Buyer is obligated to treat the goods sold with due care; in particular, he is obligated to insure the same adequately at his own expense for the new value against damage by fire, water or theft.
- 8.3 In case of attachments or other interference by third parties, the Buyer must inform us without delay in writing so that we can bring an action under § 771 Code of Civil Procedure (ZPO). If the third party is unable to refund any court expenses or extra judicial expenses to us in accordance with § 771 ZPO, the Buyer is liable to us for the losses suffered.
- 8.4 The Buyer is entitled to resell the goods in the normal course of business, but already now assigns to us all receivables arising from this resale against his own buyers or third parties up to the amount of the final invoice total (including VAT) of our receivable, regardless of whether the goods sold have been resold before or after processing. The Buyer remains entitled to collect this receivable even after assignment. This does not affect our right to collect the receivable ourselves. Nevertheless, we undertake not to collect the receivable for as long as the Buyer continues to fulfil his payment obligations out of the proceeds received, does not default on payment and, in particular, does not present any petition for the institution of composition or insolvency proceedings or cease to make payments. If this is the case, however, we may require the Buyer to notify us of the receivables assigned and their debtors, provide all details required for collection, hand over the related documents and notify the debtors (third parties) of the assignment.
- 8.5 The processing or transformation of the goods by the Buyer is always done on our behalf. If the goods sold are processed with other goods not owned by us, we acquire co-ownership of the new thing in the proportion of the value of the goods sold (final invoice total, including VAT) to the other goods processed at the time of processing. The same applies to the goods created by processing as to the goods delivered subject to reservation of title.
- 8.6 If the goods sold are inseparably mixed with other goods not belonging to us, we acquire coownership of the new thing in the proportion of the value of the goods sold (final invoice total, including VAT) to the other mixed goods at the time of mixing. If mixing occurs in such a way that the Buyer's thing is to be regarded as the main thing, it is deemed to have been agreed that the Buyer assigns a pro-rata share of title to us. The Buyer keeps custody of the thing in his sole ownership or in co-ownership for us.
- 8.7 The Buyer also assigns to us, as security for our receivables from the Buyer, the receivable accruing to him from a third party as a result of the goods sold being connected to a piece of land.
- 8.8 We undertake to release securities available to us at the request of the Buyer in the event that the realisable value of our securities exceeds the receivables to be secured by more than 10%; we have the right to select the securities to be released.

## Article 9 Technical Support and Consultation

- 9.1 Our technical support and consultation, any operating instructions etc. are based on practical and scientific experience. They are, however, not binding and do not release the Buyer from the obligation to check the suitability of the goods for the intended purpose and processes by making preliminary test and trial bondings.
- 9.2 Even if we provide technical support and consultation to the Buyer, the Buyer bears the risk for the success of his operations. This does not exclude any claims of the Buyer against us under Article 6.

## Article 10 Applicable Law - Place of Performance

- 10.1 If the Buyer is a registered merchant, a legal entity under public law or a public-law special fund, the courts of our place of commercial registration shall be place of performance; we are, however, entitled to bring an action against the Buyer at his court of domicile.
- 10.2 The law of the Federal Republic of Germany applies; application of the UN Convention on Contracts for the International Sale of Goods is excluded.
- 10.3 Unless otherwise stated in the order confirmation, place of performance is our place of commercial registration.

(The present document is a translation of the German Terms of Sale dated Dec. 01, 2006. In case of dispute, the original German document applies)

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