

K. D. Feddersen & Co.
Ueberseegesellschaft mbH

General Conditions of Sale/Export

1. Scope

Deliveries will be made subject to these general conditions of sale which will remain in force for all future supplies even without further notification and over-ride any other terms of conditions stipulated or referred to by the Buyer, even if we perform delivery despite our knowledge of differing or contrary terms of the Buyer. These general conditions of sale only apply to enterprises, corporate bodies under public law and state-operated funds within the meaning of Sec. 310 Para. (1) German Civil Code (“Bürgerliches Gesetzbuch – BGB”).

2. Formation of contract

Our quotations are not binding offers. The Buyer’s orders are binding and can be accepted by us within a period of 14 days through written order confirmation or through the execution of the order by delivery of the goods.

3. Price alteration

If our prices are altered generally (i.e. not only in relation to the Buyer, but to every contracting party of ours) between the date of contract and the date of despatch due to increases of the production costs or delivery costs (e.g. increase of the VAT, increase of the prices of our supplier, general shortage of raw material) which are not based upon our default and which have not been foreseeable at the time the contract was concluded, the price ruling on the date of despatch will apply.

4. Delivery dates/Reservation of delivery by our supplier

Delivery dates quoted are not to be binding. We are entitled to partial delivery.

The observance of dates or periods of delivery is subject to the correct and punctual delivery to ourselves by our supplier.

5. Variations in content

Information supplied with regard to the percentage content and mixing proportions of our products are only to be regarded as approximate average values. We shall not be liable for any variations in such content which are within the tolerances applicable to the particular goods or are unavoidable despite every care in manufacture and in determination of values.

6. Use of products

All particulars and information with respect to the suitability and application of our products are given without obligation and do not relieve the Buyer from undertaking his own investigations and tests. The Buyer is responsible for the observance of legal and official regulations covering the use of our product.

7. Performance

- 7.1. The Buyer is obliged to examine the goods delivered as required by German Law (Section 377 of the German Commercial Code) and in doing so to check every delivery in any respect. Complaints concerning any discrepancy in the quality or quantity of the goods or in respect of any damage/loss in transport must be submitted to us by facsimile communication or e-mail immediately, in no event later than two days if these defects are visible to the naked eye, or, as far as they can be discovered only by a reasonable examination, not later than ten days after the possible customs clearance of the goods or, if customs clearance is not necessary, after delivery of the goods. If the quality/quantity dis-

crepancy or the damage/loss in transport cannot be discovered by a reasonable examination, complaints must be made immediately after detection.

- 7.2. In the case of justified complaints, shortages will be rectified by further delivery and other complaints will be dealt with by supplementary performance. If we should refuse the supplementary performance according to Section 439 Para. (1) German Civil Code or if the supplementary performance should be unsuccessful the Buyer shall have the right to cancel the purchase contract or reduce the purchase price. The Buyer shall not be entitled to return the goods to us without our consent.

Any claims in respect of defects or shortages are time-barred in 1 year, except Buyer claims for damages (i) caused intentionally or by gross negligence or (ii) arising out of death, injury to body or health.

8. Liability

We are liable pursuant to the statutory provisions as far as the Buyer claims damages (i) caused intentionally or by gross negligence, including intent or gross negligence by our representatives or vicarious agents, or (ii) arising out of death, injury to body or health. We are liable pursuant to the statutory provisions also for ordinary negligence as far as we violate such a contractual obligation whose performance is necessary to execute the contract properly and whose performance the Buyer may regularly rely upon; in this event our liability is limited to the foreseeable, typical damage. Beyond this any liability for damages is excluded. The exemption from liabilities is also effective for the personal liability of our legal representatives, employees and other vicarious agents. Liability pursuant to the product liability law remains unaffected by this exemption.

9. Transport

- 9.1. Unless otherwise agreed, we have the right to choose the route and the means of transport. If we have to bear the transport charges, then any increase occurring therein after the contract has come into force shall be charged to the Buyer.
- 9.2. Unless otherwise agreed or implied by trade custom all deliveries travel at the risk of the Buyer even if transport charges are being borne by us. Claims arising out of damage in transit must be lodged by the Buyer directly to the deliverer within the specified period. General Commercial Terms such as FOB, CIF, CFR etc. shall be interpreted in accordance with the latest version of the Incoterms.

10. Force Majeure

War, breakdowns, strikes, lockouts, shortages of energy and raw materials, transport problems, orders from High Authorities including those which render the execution of the particular business within a reasonable time uneconomical, as well as other cases of "Force Majeure" both in relation to ourselves and our suppliers, relieve us from the obligation to supply for so long as any one or other of them or its or their consequences last. The period of delivery, if any, will be extended for the term of the aforementioned occurrences. All the aforementioned occurrences entitle us to withdraw from the contract wholly or in part without the Buyer having any right to compensation, if it is not foreseeable how long the occurrences will last.

11. Payment

- 11.1. Our terms of payment are those ruling on the date of delivery. Any bank charges arising from payment of the purchase price in the Buyer's country or from the opening and confirmation of Letters of Credit shall be borne by the Buyer. Any letters of credit must comply with the Uniform Customers and

Practice of Documentary Credits issued by the International Chamber of Commerce, Paris, or any subsequent amendment thereof.

- 11.2. Buyer shall only be entitled to offset own claims against our claims or to make use of a right of retention if his counterclaims are undisputed, validated or accepted by us. Furthermore, Buyer may exercise a right of retention only if his counterclaim is based on the same contractual relationship.
- 11.3. Where there is any doubt as to the Buyer's ability to pay in accordance with the contract and particularly where the Buyer is in arrears, we are entitled to demand payment in advance or security for all monies due before making any further deliveries. If the Buyer should fall behind in fulfilling his obligations, we are entitled to suspend further deliveries, to stop goods in transit and take back possession of them, to withdraw any credit granted for deliveries already made and without prejudice to any other claims which we may have to charge interest on the amount outstanding.

12. Security interest/retention of title

- 12.1. We retain title of the goods until the Buyer has completely fulfilled all his obligations to us, such title being retained notwithstanding delivery of the goods to the Buyer or to any person for the purpose of delivering to the Buyer.
- 12.2. The Buyer is, however, authorised to dispose of such goods owned by us in the ordinary course of his business, such authorisation being automatically cancelled if the Buyer falls into arrears with payment, becomes insolvent, or if proceedings for bankruptcy or the winding up of the Buyer are issued in any court.
- 12.3. Following such cancellation subject to paragraph 12.2., we have the right to withdraw from the contract and to demand from the Buyer the return of all goods owned by us in his possession. All expenses incurred by us during the hand-over of such goods shall be borne by the Buyer.

- 12.4. Upon request the Buyer shall give us all information necessary to enable us to locate the goods owned by us in his possession.
- 12.5. If the Buyer sells goods owned by us in the ordinary course of his business he hereby assigns all claims arising from such transactions to us in advance as far as they do not exceed our claims against the Buyer. This applies regardless whether the goods are sold before or after specification. After assignment the Buyer remains entitled to collect this claim. Our right to collect the claim by ourselves remains unaffected. However, we commit ourselves not to collect the claim while the Buyer fulfils his obligations to pay and proceedings for bankruptcy or the winding up of the Buyer are not commenced in any court. If Buyer is in arrears with his payments or if proceedings for bankruptcy or the winding up of the Buyer are commenced, the Buyer shall upon our request disclose the assigned claims and their debtors, furnish all data necessary for the collection of the claim, hand-over all materials relating to the claim and inform the debtors about the assignment.
- 12.6. The Buyer stores the goods owned by us on our behalf and separately from his goods and goods of third Parties. Where goods owned by us are brought into new forms together with Buyer's or third party's goods, we acquire co-ownership of the new thing in proportion of the value of the goods. Furthermore, the same provisions that apply to any sold thing we retained ownership of shall apply to the new thing accordingly.
- 12.7. Where the sold thing is mixed inseparably with things not owned by us we acquire co-ownership of the new thing in proportion of the value of the sold thing to the value of the other mixed things at the time of mixture. Where the Buyer's thing is regarded as the main thing it is deemed to be agreed that the Buyer transfers proportionally co-ownership. The Buyer keeps the ownership or co-ownership on our behalf.

- 12.8. The Buyer also assigns his claims against a third party which have been arising from the union of a sold thing with real estate, in order to provide security for our claims against the Buyer.
- 12.9. We commit ourselves to release our securities upon the Buyer's request insofar as the realisable value of our securities not only temporarily exceeds our claims for more than 10 % or if the nominal value not only temporarily exceeds our claims for more than 50 %; our right to choose the securities to be released is reserved.
- 12.10. If the Buyer fails to fulfil any of his obligations under this section 12 in due time we are entitled to rescind the contract forthwith.
- 12.11. Insofar as the applicable law of the country in which the goods are delivered in order to effectively protect our title of the goods require the performance of special preconditions, e.g. a registration of our rights or any security right, Buyer is obliged to investigate the legal situation, to inform us accordingly and – in coordination with us – to issue the performance of the preconditions, e.g. such registration for our benefit.
- 12.12. If under the law of the country in which the goods are located reservation of title is not permitted, we shall be entitled to demand from the Buyer equivalent security. The Buyer must co-operate fully with us in all measures necessary and legally permissible for the protection of our rights, and must inform us immediately if any third party should make a claim which might prejudice such rights.

13. Replacement provisions

Where individual terms in these conditions are rendered impracticable or invalid the remainder of these conditions shall not be rendered void. In such circumstances the invalid or impracticable conditions shall be replaced by valid provi-

sions ensuring that the intentions of the parties as to the purpose of the contract shall be fulfilled in as effective manner as possible.

14. General

The place of payment shall be our domicile, currently Hamburg. The venue for any dispute arising out of or in connection with this contract shall be our domicile, currently Hamburg; however, we are also entitled to file an action at the appropriate court of law in the Buyer's country. The applicable law shall be exclusively the law of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.