

**K. D. Feddersen & Co.**  
**Uebersseegeellschaft mbH**

**Purchasing conditions**

**1. Scope**

Our purchasing conditions apply exclusively. Any conditions of the Vendor being diverging or to the contrary are rejected. This applies even if we order goods despite our knowledge of differing or contrary terms of the Vendor. Our purchasing conditions apply only to enterprises, corporate bodies under public law and state-operated funds. Our purchasing conditions apply also to all future trading with the Vendor.

**2. Ordering**

Orders are only valid in written form. Orders issued orally or by telephone only become effective if they are confirmed by us in writing.

**3. Confirmation**

The Vendor shall confirm our order in writing, stating our ordering data. Amendments to orders shall be laid down in writing for purposes of proof; they only become effective with our written confirmation.

**4. Documents and Confidentiality**

All documents which we hand to the Vendor for the purpose of executing the order remain our property. The Vendor may not, without our express permission, allow any third party to look into, or make otherwise accessible to third parties the documents or any other not commonly known commercial or technical information the Buyer became aware of within our business connection.

**5. Delivery default**

The stipulated delivery date is binding. Early deliveries require our consent. In the event of delivery default we are entitled to withdraw from the contract in accordance with the statutory provisions. Should it not be possible to execute an order by the agreed time, the Vendor is under an obligation to inform us immediately, in order to enable us to set a reasonable additional period. Should delivery not be affected punctually as regards firm transactions, we are entitled either to waive delivery entirely and demand damages in lieu of performance or to insist on subsequent delivery. In the latter event, the damage proved to have been caused to us due to non-timely or incomplete delivery, including all expenses shall be defrayed immediately by the Vendor. We shall be able to carry out possible cover-purchases without any special formalities.

**6. Transfer of risk**

The risk attached to goods transport devolves upon us only at the prescribed address of destination. In the case of transactions "f.o.b." or "free alongside ship" the Vendor shall deliver the goods at his expense and risk on board or alongside the ship.

**7. Dispatch and marking instructions**

The Vendor shall observe our dispatch and marking instructions. In the event of non-observance, all expenses resulting therefrom shall be debited to the Vendor. In so far as no goods are involved which we trade under their brand names and which are recognizable as such, the goods, their appearance and packaging must be strictly neutral, without name of firm or sign. Nor may anything be packed in the consignment which indicates the origin of the goods. Any samples, catalogues and printed matter that might be desired shall always be dispatched separately from the goods.

## **8. Third Party's Rights**

The Vendor is liable for any infringement of third parties' rights through the goods to be delivered or their use, unless the Vendor is not responsible for the respective infringement. In case that a third party makes a claim on us due to an infringement of third parties' rights for which the Vendor is responsible, the Vendor shall compensate our costs, expenses and any damage, including attorney's fees and court costs, incurring in relation with the legal defense against the respective claim and shall indemnify us from any costs and claims of the third party. Furthermore, the Vendor shall in such a case take all reasonable measures in order to hold off any claim of a third party against us, especially to present all information necessary for an effective legal defense.

## **9. Dangerous goods**

The packing and marking of dangerous, inflammable or explosive goods shall be carried out in accordance with the valid national and international decrees, guidelines and conventions, particularly the Decree on Hazardous Sea Freight Goods, the International Decree for Transporting Dangerous Goods by Rail (RID) and the European Agreement on the International Transportation of Dangerous Goods by Road (ADR). The goods have to be expressly described as dangerous, inflammable or explosive in the order confirmation and in the bill of delivery.

## **10. Reference samples**

Where the order stipulates delivery of reference samples, these shall be supplied at the latest together with the invoice; we are not under an obligation to examine them.

## **11. Performance guarantee**

- a) In case of defects, we are entitled to the unabbreviated statutory warranty claims. The Vendor is obliged to bear the expenses related to the removal of defects or the replacement delivery. In any case, we reserve our rights to with-

drawal and our rights to claim damages, especially to claim damages in lieu of performance.

In case of imminent danger or special urgency, we are entitled to remove the defects on the Vendor's costs or to make any third party remove the defects on the Vendor's costs.

Any delivery is not approved solely by payment.

- b) In overseas transactions, with regard to quality, range and other delivery differences, the findings of the overseas experts shall be authoritative for both sides; such experts have to be nominated in accordance with customs prevailing at point of destination.
- c) As far as the mercantile requirement to make a complaint in respect of a defect of the goods (Section 377 of the German Commercial Code (*“Handelsgesetzbuch”*)) applies, the duty is limited to control the goods regarding their amount, their identity, transport or packaging detriments which are externally noticeable as well as the examination of samples taken with regard to the essential characteristics of the goods.
- d) If the goods are delivered to us, the examination and the objection according to Section 377 of the German Commercial Code are in due time if the objection is forwarded to the Vendor in case of apparent defects which are noticeable with the naked eye within three days after receipt of the goods. In case of defects which only become noticeable by means of an examination, the period amounts to two weeks. An objection regarding any other defects which become noticeable subsequently is in due time, if it is forwarded to the Vendor within two weeks after discovery of the defects.
- e) If the goods, according to the contractual provisions, are not delivered to us, but directly to our customers, the examination of the goods according to Section 377 of the German Commercial Code needs only to take place at the cus-

tomers. The examination and the objection according to Section 377 of the German Commercial Code are in due time if the objection is forwarded to the Vendor within two weeks after accomplishment of the customs clearance; this does not apply if the customs clearance is delayed due to a default of our customer, in this case the period of two weeks commences at the time the customs clearance would have been accomplished without the delay provoked by our customer.

f) If our client is a merchant and the goods are resold, the examination and the objection according to Section 377 of the German Commercial Code are as well in due time if the objection is forwarded to the Vendor within two weeks after arrival of the goods at the end customer.

g) Claims based on defects become time-barred after three years.

## **12. Packing**

Unless otherwise agreed, no refund is made in respect of packing.

## **13. Price**

The agreed price applies only in the currency as given without the gold clause or gold parity.

## **14. Invoices**

The invoices - also in respect of part consignments - have to be made out at the latest by 3 months after delivery and have to accord precisely with the instructions of the order. In the event of non-compliance or incorrect execution of these instructions the Vendor will be liable for the damage resulting therefrom, including possible customs penalties.

## **15. Transfer of ownership**

Title of the goods shall be regarded as transferred to us at the latest when they are paid for, and must be separated from the remaining stocks and properly

stored as belonging to us. The Vendor has to insure the goods until leaving the factory against fire and theft, even when the goods have already become our property. In the latter case we bear the costs of insurance.

**16. Liability of the Vendor**

The Vendor is liable according to the statutory provisions.

**17. Our Liability**

We are liable pursuant to the statutory provisions as far as the Vendor 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 a culpable breach of life, body or health. We are liable pursuant to the statutory provisions also for ordinary negligence as far as we violate 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 and typical damage. Beyond this any liability for damage is excluded. The exemption from liabilities is also effective for the personal liability of our legal representatives, employees and other vicarious agents.

**18. Set-off and Retention Rights**

We are entitled to offset counterclaims and to make use of a right of retention according to the statutory provisions.

**19. Venue and Applicable Law**

For merchants, corporate bodies of public law and state-operated funds, the venue is Hamburg. However, we are as well entitled to sue the Vendor at his general venue. German law shall apply exclusively. Application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.

