

## **Standard Terms and Conditions of Messrs. Concentric Hof GmbH**

### **I. Applicability of the Conditions**

- (1) Our supplies, performances, and offers shall be effected solely on the basis of these Terms and Conditions. Thus, they shall also apply to all future business connections, even if they are not explicitly agreed upon once again. Our conditions shall be deemed to be accepted at the latest once our goods or performances have been received. Any conflicting confirmations of the purchaser with reference to his terms and conditions and/or conditions for purchasing are herewith opposed.
- (2) With the exception of executive directors and authorised signatories, our employees shall not be entitled to give verbal subsidiary agreements or oral undertakings. Any actions of these employees shall be subject to our explicit confirmation for becoming effective.

### **II. Offer and Conclusion of Contract**

- (1) The proposal in brochures, advertisements, etc. shall be irrevocable until being accepted. We shall be bound to very especially elaborated offers for 30 calendar days. Irrespective of the provision stipulated under section I para. 2, any statements of acceptance and all orders shall be subject to our confirmation in writing or by fax/telegram for their legal effect. The same shall apply to any supplements, amendments, or verbal subsidiary agreements.
- (2) The minimum value per order amounts to 50.00 € (exclusive of turnover tax). We shall not confirm orders on less order values, unless the purchaser agrees to pay the minimum amount of 50.00 € independently of the real value of the order.
- (3) We reserve the right to make constructional changes as far as concerning commercial and/or unimportant modifications and, in particular, representing improvements of the goods. We shall not be obliged, however, to make such changes also at products which have already been supplied by us.
- (4) We reserve the right of ownership, the copyright, and any other rights for documents associated with the offer (e.g. illustrations, drawings, descriptions); it shall be allowed to make them accessible to third parties only if they are intended explicitly for being transferred.

### III. Prices

- (1) Our prices as being valid on the day of delivery plus turnover tax at the current rate are authoritative. Any additional supplies and performances shall be charged separately.
- (2) Fixed prices shall be subject to an explicit written agreement. The provision in section I para. 2 shall remain unaffected hereby. We reserve the right to change our prices appropriately, in case cost reductions or cost increases, in particular due to wage agreements, or material price changes occur after the date of having entered into the contract. At the purchaser's request, we will provide evidence in respect of these price changes.
- (3) Unless otherwise agreed, the prices are quoted for delivery ex works, packing costs excluded.

### IV. Period of Delivery and Performance

- (1) We shall be entitled to postpone the delivery and/or the performance for the duration of any occurring obstacle plus an appropriate preparatory period or to withdraw from the contract in full or in part on account of the part thereof which has not been fulfilled as yet, should delays in delivery and performance occur owing to force majeure and owing to events which make delivery significantly more difficult or even impossible. In addition, subsequently occurred difficulties in materials procurement, interruption of operations, strike, lockout, shortage of staff, shortage of means of transport, official orders, etc., belong to those delays in delivery and performance even if occurring on the premises of our contractors or their subcontractors, insofar as neither we nor our subcontractors are liable for those delays. This shall not apply insofar as we are already in default in delivery and/ or performance.
- (2) Should the obstacle as defined by para. 1 take longer than 3 months, the purchaser shall be entitled to withdraw from the contract in respect of the part which has not been fulfilled as yet, after an appropriate additional respite has been set.
- (3) As far as we are responsible for a delay, the purchaser shall be entitled to a compensation for the delay amounting to 0.5 % for each completed week of the delay, but totally up to a maximum of 5 % of the invoice value of the deliveries and performances affected by the delay only. Any claims going beyond this, in particular all types of claims for damages, are excluded, unless we would have induced the occurrence of the delay in a grossly negligent or deliberate way.
- (4) Should dispatch or assembly be delayed for reasons which the purchaser is responsible for, and should he not receive our performance, though he has been requested to do so within an appropriate respite, we shall be entitled, once the period has elapsed, to charge him for the costs incurred by storage, storage in the contractor's factory, but for no less than 0.5 % of the invoice value for each month as a lump-sum damage caused by delay. Any legal claims going beyond this shall be reserved. The customer shall be entitled to provide evidence towards us that slight damage or no damage at all has been caused as a result of his delay. The contractor shall be entitled to dispose of the article of sale in another way, after an appropriate respite has been set and elapsed unsuccessfully, and to furnish the purchaser within an adequately extended period. In case assembly is agreed upon to be provided by us, the customer has to arrange for unhindered transport of our products into the premises and for access.

- (5) We reserve the right to supply larger orders in form of part deliveries and part performances and to invoice them accordingly. In this case, the respective part performance may relate to a maximum of 1/3 of the total performances; otherwise, the purchaser shall be entitled to withdraw from the contract.

#### **V. Shipment and Passing of Risk**

- (1) Goods are dispatched ex works at the purchaser's expense. Unless written instructions exist, we provide shipment at our best discretion, but excluding any liability for choosing the cheapest and speediest mode of dispatch.
- (2) Type of transport, means of shipment, route of transport, type and extent of the required protection means, selection of forwarding agent or freight carrier, and, in addition, packing, shall be at our option. This shall be done at our discretion and with usual care excluding any liability. At customer's option, the consignment will be insured against theft, breakage, transport damages, fire losses, water damages, and against other insurable risks at his expense.
- (3) Risk passes to the purchaser, as soon as the consignment has been handed over to the person effecting transport or has left our factory for being dispatched. In case dispatch becomes impossible without our fault, risk passes to the purchaser once goods are reported as being ready for dispatch.
- (4) Should dispatch or assembly be delayed for reasons which the customer is responsible for, and should he not receive our performance, though he has been requested to do so within an appropriate respite, we shall be entitled to charge him either for the costs actually incurred at our end or for a lump sum of 1 % of the invoice value of the deliveries and performances affected by the delay for each completed week of the delay - up to a maximum of 5 % of the invoice value, however.

#### **VI. Warranty and Liability**

- (1) Should the article of sale be defective or miss guaranteed characteristics, or should it become defective within the warranty period due to manufacturing or material defects, the warranty claims of the purchaser shall first be limited to the effect that we will supply replacement or subsequently fulfil our obligations at our option. Only in the event of failure of subsequent performance, the buyer may demand at his option for the purchase being cancelled and/or for the reimbursement being reduced. For external products, which are essential part of the article of sale, our liability may be limited to the assignment of the claims to which we are entitled towards the contractors of the products. The claims assigned shall be determined by subsequent performance or replacement delivery as provided in § 439 German Civil Code (latest relevant version). Should we exercise this right, the purchaser shall be entitled to the right of withdrawal. Should subsequent performance or replacement delivery fail, reduction of reimbursement may be required. Only after previously having laid claim to the third party in vain, the warranty claims suspended up to that time shall revive towards us.

- (2) Any apparent defects, transport damages, shortages, and wrong deliveries must be notified (in business dealings) immediately, within two days on receipt of the goods at the latest, however. It is neither allowed to machine nor process, nor install complained goods.
- (3) The purchaser must inform our after-sales service management in writing or by fax/telegram of any defects immediately, within 2 weeks on receipt of the article of sale at the latest, however, irrespective of the provision in para. 2. The defective articles of sale must be kept ready for being inspected by us, and that in the state of the defect as and when having been identified. Defects, which cannot be detected within this period even after the most careful of inspection, must be notified to us in writing or by fax/telegram immediately after having been detected. We shall not assume liability for any defects at the purchased item which are traced back to improper handling with such item, no matter if they are caused by third parties or by the buyer himself, unless the damages are traced back to our fault of the user of these Standard Terms and Conditions. In this case, the respective burden of proof shall be on buyer's side.
- (4) The warranty period amounts to 1 year from the date of transferring the article of sale.
- (5) Liability for normal wear and tear shall be excluded.
- (6) Apart from the previous notification in writing or by fax/telegram of any existing defects already defined in para. 3, the purchaser shall undertake to return defective goods for guarantee purposes not before the responsible after-sales service management has communicated a relevant damage code to him, by means of which an attribution of his goods to a specific order within the scope of a speedy settlement of cases of defects will first be made possible.
- (7) We do not assume any warranty for damages which were caused by one of the following reasons:
  - Use not as directed or improper use, faulty assembly and/or commissioning by the purchaser or by third parties,
  - faulty or improper handling - in particular by excessive stress - or unsuitable operating facilities.

The liability of the user for damages, which are traced back to improper assembly by the user or to incomplete assembly instructions in case of self-assembly, shall remain unaffected hereby.
- (8) Should it be beyond our power to repair the goods and/or to replace them, or should the purchaser have set us in vain an appropriate additional respite for repair and/or replacement delivery, he shall be entitled to withdraw from the contract. In the event of any missing guaranteed characteristic, the purchaser shall be entitled to this right from the outset.
- (9) We shall warrant for replacement deliveries and for repairs in the same extent like for the original article of sale; for replacement deliveries, the warranty period shall start anew.

- (10) We shall be at the disposal of our customers to the best of our knowledge, in order to provide information and to give advice on the use of our products. In this connection, we shall be liable beyond the legal regulations only if a special fee was agreed upon, because our liability is limited to a maximum of 25 % of the special fee, unless we would have caused a damage in a grossly negligent or deliberate way.
- (11) Claims for damages resulting from contractual breaches of duty (formerly claims resulting from positive breach of claim and from fault on the day of entering into the contract) and from unlawful action shall be excluded both towards the user and towards his assistant and vicarious agent, unless any deliberate or grossly negligent action is concerned. This shall not apply to faults, insofar as a major duty to perform is concerned. This exemption from liability shall not apply to missing guaranteed characteristics, should the guarantee have the purpose to safeguard the buyer against damages which did not occur at the article of sale itself (so-called consequential harms caused by a defect). The liability shall be limited to the contract-typical damage which is reasonably foreseeable on the day of entering into the contract. Any claims of the damaged individual in respect of damages to his/her person or at his/her privately used property pursuant to the law of product liability shall remain unaffected by these provisions of exemption from liability.
- (12) The personnel to verify defects shall not be authorised to accept any defects or to make any declarations which shall be binding for us.
- (13) §§ 478, 479 German Civil Code (latest relevant version) shall remain unaffected by the above-mentioned provisions. They shall apply provided that our purchasers (dealers) shall undertake, insofar as they will make on their part any reconstructions or modifications at the ordered goods on dispatch of the same, to mark those goods accordingly.

We shall not assume any warranty for such defects which may occur in connection with reconstruction work the purchasers may make on their own authority prior to passing the goods onto the consumer.

Should the purchaser neglect the duty to mark the goods, and should any defect of the goods based on reconstruction turn out later, the purchaser shall be obliged towards us to reimburse those costs as having been incurred within the scope of the removal of defects. Our liability for deliberate act and gross negligence shall remain unaffected hereby.

## **VII. Retention of Title**

- (1) Until the total liabilities (including any incidental claims and any expenses made in the interest of the customer) resulting from the business relation have been paid in full, we shall be granted the following securities which we shall release on demand at our option, insofar as their value exceeds the claim effectively by more than 20 %.

- (2) The goods shall remain our property. Processing or reshaping shall always be effected for us as manufacturers, but without any obligation on our part. Should our (joint) ownership lapse by connection, it shall be agreed upon already now that the (joint) ownership of the purchaser at the consistent goods passes onto us in the proportion of the respective value (invoice value). The purchaser shall keep our (joint) ownership in safe custody for us free of charge. Goods, for which we are entitled to a (joint) ownership, are hereinafter called reserved property. For running account (relationship on an open item basis), the reserved property shall be deemed to be the security for our balance claim, and that even if payments are made for especially identified claims. A balance shall be deemed to be accepted, should the customer not oppose the balance notification within 2 weeks on receipt.
- (3) The purchaser shall be entitled to process the reserved property in proper business dealings and to sell it with retention of title, insofar as he is not in default. Attachments or transfers by way of security shall not be allowed. As a precaution, the purchaser shall assign to us already now to the full extent any claims resulting from the resale or from any other legal grounds (insurance, unlawful act) regarding the reserved property (including claims in respect of balances from account current). We shall revocably authorise him to collect on his own behalf for our account the claims assigned to us. After having been requested by us, the purchaser will disclose the assignment and make the required information and documents available to us.
- (4) Should any third parties access the reserved property, the purchaser shall refer to our ownership and inform us immediately. Costs and damages shall be borne by the purchaser.
- (5) In case of improper handling of the purchased goods or in case of purchaser's transfer contrary to his duty, in particular in case of default of payment, we shall be entitled to take back the reserved property at the purchaser's expense. Neither our taking-back nor our attachment of the reserved property represents any withdrawal from the contract - unless §§ 491 following pages German Civil Code regarding consumer loan contracts apply.

## **VIII. Payment**

- (1) Should no other maturity dates be determined, our invoices receivable shall principally become due for payment within 30 days from date of invoice without deduction. As far as no previous invoices are due for payment and any instalment invoices are paid within the period of maturity, we shall grant a 2 % discount, always on the net price, on condition that the invoice amount will be booked on our account within 10 days from the date of invoice, insofar as goods deliveries are concerned. Service and/or other services shall be payable immediately without deduction. As long as older invoices are still due for payment, the purchaser shall not be entitled to deduct any discount. In spite of any non-conforming provisions of the purchaser, we shall be entitled to credit payments against his oldest debt first. Should costs and interest have incurred, we shall be entitled to credit the payment first against the costs, then against the interest, and finally against the main performance.
- (2) For payments in instalments, the full remainder of the debt and all other claims shall become due, insofar as the purchaser defaults with no less than one instalment.

- (3) Should payment be made by bank transfer, it shall be deemed to be made once the remittance has been effected on condition that the account has sufficient cover. Should payment be made by cheque, it shall be deemed to be made once the cheque has been dispatched or has reached us in case of non-dispatch on condition that the cheque is credited to our account. Delivering bills shall be subject to our previous approval in each individual case. In this connection, we reserve the right to stipulate specific bill conditions. This shall also apply, should the purchaser make a cheque available to us for partially or fully covering the amount of bill. Discount and note charges shall be borne by the purchaser and be paid immediately.
- (4) Should the purchaser be in default, we shall be entitled to charge interest amounting to the interest rate calculated by the commercial banks for open credits, but amounting to no less than 5 % above the respective discount rate of the European Central Bank, and that with effect from the date concerned.
- (5) Should the purchaser not fulfil his obligations to pay, in particular should he not honour a cheque or bill, or should he cease payment, or should we become aware of other circumstances challenging his creditworthiness, we shall be entitled to demand payment for the complete remainder of the debt, even if we have received bills or cheques. In addition, we shall be entitled in this case to require advance payments or securities or to withdraw from the contract after an appropriate additional respite or to claim for damages because of non-performance.
- (6) The purchaser shall be entitled to offset, retention, or reduction only if we agreed to it explicitly in writing or if the counterclaims were recognized by declaratory judgement or are indisputable, also in the event of asserting any claims or counterclaims.

#### **IX. Repurchase of our Goods**

In exceptional cases, we shall be prepared to buy back the goods supplied by us. For each individual case, repurchase shall be subject to an explicit written agreement, however. Therefore, the purchaser shall not be entitled to return to us the supplied goods without the conclusion of a relevant agreement. The provision in section I para. 2 shall remain unaffected hereby.

#### **X. Data Protection; Issuing Cautions in Respect of Property Rights**

- (1) Pursuant to the provisions of the German Data Protection Act, we point out to our customers that we shall process their personal data required for managing the business relations by using electronic data processing and that we shall pass them on in-house.
- (2) Should third parties assert towards the purchaser the infringement of industrial property rights in respect of the article of sale, he shall be obliged to inform us immediately.

**XI. Place of Jurisdiction; Part Nullity; Applicable Law**

- (1) Hof shall be the exclusive venue.
- (2) The substantive law of the Federal Republic of Germany shall solely apply. The uniform laws on the international purchase of movable objects shall not apply.
- (3) Should any provision in these Terms and Conditions or any provision within the scope of other agreements be or become ineffective, the effectiveness of all the other provisions or agreements shall not be affected hereby. The ineffective provision must be replaced by an effective one realising the economical purpose intended by it as far as possible.
- (4) **With effect from 1 January 2003, the Standard Terms and Conditions of sale, delivery, and payment as defined before shall solely apply to all new concluded contracts.**

Established:

Date: 2011-09-20; Signature: R. Dorschner

Verified and released:

Date: 2011-09-20; Signature: B. Thoß