

General Terms and Conditions of Sale Of prometho GmbH

Article 1 Validity of the terms and conditions

1. Our following General Terms and Conditions shall exclusively apply to the sale of all our products.

We shall not recognise terms and conditions of the Purchaser which conflict with or deviate from our terms and conditions, unless we have expressly consented to the validity of such a term and condition in writing.

They shall also apply to future business relations, even though they have not been expressly presented. They shall also apply when we shall execute the supply unconditionally in the knowledge of conflicting or deviating terms and conditions of the Purchaser.

These terms and conditions are deemed as agreed, at the latest, with the acceptance of the goods or service.

2. Our General Terms and Conditions of Sale shall only apply to companies.

Article 2 Offer and conclusion of agreement

1. Our offers are non-binding and without obligation. Purchase orders and orders are to be made in written form.

The contract is concluded when our order acknowledgement has been sent. Depending on the type of product being sold, the enclosed product data sheets and technical information sheets individually prepared by us are integral parts of the agreement, in particular the safety data sheet and the technical information sheet. The Purchaser is obligated to pay attention to and comply with the information contained in these sheets.

2. The parties to the agreement may only refer to amendments or additions, which deviate from the original agreement concluded in written form, when these have been undertaken in written form.

Article 3 Prices

1. The Purchaser is obligated to pay the agreed purchase price for the service rendered by us. In this regard, the individually agreed prices as stipulated in the agreement shall be binding.

For the first business transaction between the two parties (first purchase through the Purchaser) our delivery shall only be effected—regardless of the quantity—against payment in advance of the agreed purchase price.

2. Payment discounts shall not be granted, unless, something to the contrary has been agreed in writing with the Purchaser. The statutory regulations with regard to the consequences of delays in payment shall apply.

3. For orders of more than 50 Litres, we are entitled to request appropriate deposits (at least 20% of the agreed purchase prices).

4. We may demand an instalment in the amount of the value of the rendered service for self-contained performance parts.

Article 4 Copyrights

We retain the sole copyrights to all goods supplied by us as well as the content of the individually drafted safety data sheets and technical information sheets. The Purchaser does not acquire any rights

to our products, to the recipes of said products or the recipes of the semi-finished products being used.

Furthermore, in such cases where we adapt the recipe of the ordered products to the individual requirements of the Purchaser, he shall not acquire any rights to said recipe.

Article 5 Delivery time and time of performance

1. Delivery dates and delivery deadlines shall only be binding when they have been agreed or when they have been confirmed by us in writing after conclusion of the contract.

The observation of agreed delivery deadlines and dates requires the timely and proper fulfilment of the obligations by the Purchaser. The defence of non-performance of contract shall remain reserved.

Delivery dates agreed or confirmed by us shall be non-binding when the Purchaser agrees additions

and/or amendments to the subject of the agreement with us after conclusion of the contract. In such cases, we are obligated to provide the Purchaser with a new delivery date.

2. The delivery of the ordered goods shall be effected by a transport company selected and commissioned by us at the Purchaser's expense. For goods declared as hazardous goods, the transport shall be effected by a hazardous goods transport company selected and commissioned by us at the Purchaser's expense.

The transport costs incurred will be shown in our offer.

3. The delivery of the purchased product shall be effected in standard containers with standard labelling. This contains the product name, the contained quantity, the product life as well as the hazardous ingredients that require labelling. All information going beyond this is not contained in the purchase price. Insofar, as the Purchaser desires amendments to the containers or labelling (additional information, other type of containers), these can be ordered at against additional payment.

4. For delays in delivery and delays in performance for which we are not responsible, particularly in the form of force majeure, difficulties in obtaining materials and operational disruptions for which we are not responsible not lasting more than three months, we shall be entitled to postpone the supply and delivery for the duration of the disruption. In such cases, claims of the Purchasers to withdraw from the contract or due to delay shall be waived. This shall also apply when the delay has been caused by one of our suppliers executing an order than has been received in time and as a result of this we have been prevented from carrying out a punctual delivery.

5. Should the disruption last longer than three months, the Purchaser may withdraw from the whole contract, having previously tried unsuccessfully to obtain a new deadline with regard to the nonfulfilled part of the contract or where there is a demonstrable lack of interest in a part fulfilment. In such cases, the purchaser does not have the right to claim compensation.

6. We are expressly entitled to make partial deliveries.

7. If the Purchaser is in default of acceptance or should he culpably other cooperation obligations, we shall be entitled to demand compensation for any damages incurred including any additionally incurred costs. We expressly reserve the right to further claims.

Article 6 Warranty

1. In the case of the proper fulfilment of the investigation and reprimand duties of the Purchaser in accordance with Article 377 German Commercial Code, we accept the guarantee for the freedom of defects of the purchased goods at the time of transfer of risk.

The guarantee shall then be excluded when there was no defect at the time of the transfer of risk, but was caused by improper use of our products, in particular caused by a disregard of the safety information provided to the Purchaser (Safety Data Sheet or Technical Information Sheet).

2. Insofar as there is a defect in the purchased good, the Purchaser is entitled, has a choice, to a rectification of the defect or the supply of a product free from defects (supplementary performance). The precondition for our liability for defects is that the defect is a not inconsiderable one.

Should one of the two or should both of these types of supplementary performance not be possible or disproportionate, we shall be entitled to refuse them.

We are entitled to refuse the supplementary performance, as long as the amount the Purchaser has not fulfilled his payment obligation to us in such an amount which shall correspond to the defect-free part of the service rendered.

3. Should the supplementary performance as listed in fig. 2 not be possible or fail, the Purchaser has the choice of either reducing the purchase price accordingly or to withdraw from the contract in accordance with statutory regulations. This applies in particular to a culpable delay of the supplementary performance, as well as when this fails for a second time.

4. The preceding provisions shall also apply to the supply of another product or a smaller quantity.

Article 7 Liability for damages

1. A liability for damages on our part is then excluded, when the damage was not caused by a defect at the time of transfer of risk, but was caused by improper use of our products, in particular caused by a disregard of the safety information provided to the Purchaser (Safety Data Sheet or Technical Information Sheet).

2. A claim of the Purchasers against us or our agents for compensation for violation of any contractual obligation as well as for gross negligence shall only exist in such cases in which there has been at least grossly negligent or fraudulent behaviour on our part or where the damage has been caused by an event which was deceitfully concealed or a guarantee for the condition of the work has been given.

Insofar as we cannot be accused of any fraudulent contractual obligation, the liability for damages shall be limited to foreseeable, typically occurring damages.

3. Our liability with regard to culpable fatal injury, injury to life or limb or health remains unlimited; this shall also apply to claims in accordance with German Product Liability.

4. We shall also be liable in accordance with statutory regulations when we have violated a material contractual obligation (Cardinal Obligation). However, in such cases liability shall be limited –should we not be accused of any fraudulent contractual obligation violation- to foreseeable, typically occurring damages.

Article 8 Statute of limitation

1. The statutory limitation period of the guarantee claims is 12 months, calculated from the transfer of risk (Delivery of the goods).

The statutory limitation period shall be 5 years since transfer of risk in deviation to the aforementioned limitation period, when the purchased good has been used for a structure in accordance with its normal method of use and has caused the defect in said structure.

Transfer of risk takes place when the purchased good has been made ready for despatch by us or when it has been handed over properly packed to a forwarder.

The statutory limitation period in case of a delivery regress in accordance with the Articles 478, 479 of the German Commercial Code remains unaffected; it is 5 years, as calculated from the delivery of the defective good.

2. Insofar as a liability for damages does not result from an injury to life, limb or health of the Purchaser or slight negligence in accordance with Article 7 of these provisions, claims of this kind shall expire within one year commencing with the submission of said claim.

3. Our claims to payment shall expire after five years in deviation to Article 195 German Commercial Code. Article 199 of the German Commercial Code shall apply with regard to the commencement of the statutory limitation period.

4. The limitation period expires regardless of whether the Purchaser enters into negotiations with us to assert warranty claims. A suspension of the limitation shall come into effect as of such time when we have notified the client in writing that the warranty claims are justified.

5. The Purchaser does not receive any warranty from us in the legal sense.

Article 9 Title retention, security rights

1. We reserve the right to title to all goods supplied by us to the Purchaser until all demands arising from existing business relations have been settled in full (including account balance claim from current accounts).

2. Should the Purchaser not fulfil his payment obligations, we shall be entitled to withdraw from the contract after setting a reasonable extension. We shall be further entitled to demand the return of goods supplied under reservation of title, after setting a reasonable extension.

3. The Purchaser is entitled to resell the purchased good in the normal course of business; he assigns to us all claims in the amount of the total invoice amount (including value added tax) which he is entitled to from the resale against his customers or third parties, irrespective of whether the purchased goods have been resold without or after processing.

4. Where goods supplied under reservation of title have become an essential component of a property/premises of the Purchaser or a third party, thus the Purchaser shall hereby already assign to us all claims together with ancillary rights derived from the sale of the property or property rights to the amount of the invoice amount of the goods supplied under reservation.

5. Where the reserved goods are processes, mixed, combined or used prior to resale, thus the Purchaser shall hereby already transfer to us for security of the claim his (co)title to the newly manufactured goods to the value of the supplied goods, with the simultaneous agreement, to store the goods for us free of charge. The same shall apply to goods which have been created through processing as applies to the goods supplied under reservation.

6. If the delivered goods are damaged or destroyed by a third party or where a default in payment exists, the Purchaser shall already hereby fully assign to us his third-party receivables in this regard.

7. The Purchaser is entitled to recover the amount of the receivable assigned to us. Our entitlement to recover the debt ourselves shall remain unaffected by this. We shall however be obligated not to recover the debt, as long as the Purchaser meets his payment obligations, is not in default of payment and in particular where no application has been made to initiate insolvency proceedings or where payments have been suspended.

However, should this be the case, we shall be entitled to request from the Purchaser the disclosure of outstanding receivables owed by debtors and to provide us with all information necessary for the recovery of said debts. In this event, the Purchaser is obligated to furnish us with all documentation in connection with the receivables assigned to us and to notify the debtor (third party) of the debt assignment.

8. If the value of the securities granted to us by the exceeds the value of the secured receivables by more than 10% on the basis of the preceding sections, thus we shall release securities to such an amount at our discretion at the request of the Purchasers.

Article 10 Payment

1. The (part) payments invoiced by us are payable 30 days after date of invoice at the latest according to payment data as per the individually issued invoice. We shall be first entitled to offset part payments against older outstanding accounts, despite provisions to the contrary of the Purchaser. If costs and interest have been accrued, these must first be offset against the payment.

2. Should the Purchaser not fulfil his payment obligations or not fulfil these in a timely manner, we shall be entitled to charge a late-payment interest as of the start of the default period in the amount of eight per cent above the respective base interest rate in accordance with Article 288 of the German Commercial Code. The right to claim further damages shall expressly remain unaffected.

3. The Purchaser shall only be entitled to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship.

4. The Purchaser shall only be entitled to a set-off when the counter claims on which he has based his right to a set-off has been legally determined and has been recognised by us.

Article 11 Applicable Law, place of jurisdiction, partial nullity

1. The law of the Federal Republic of Germany shall apply to these Terms and Conditions of Sale as well as for all legal relations between us and the Purchaser.

2. Our registered offices shall be deemed as the place of jurisdiction for all disputes arising directly or indirectly from the legal relationship.

3. Should one of these provisions become invalid, this shall not affect the effectiveness of the remaining provisions.

Bonefeld, 10.11.2004