

# HERBERT METZENDORFF & CO. HAMBURG

## Conditions of Supply and Payment

### 1. General Conditions

All quotations and supplies, including those ensuring from future business contacts, are exclusively subject to the conditions listed hereinafter. These conditions are deemed as accepted, at the latest, with receipt of the goods. Deviating conditions of the purchaser are not binding, even in such cases where they are not contradicted.

### 2. Conclusion of Contract

Our quotations are in all cases subject to revision. Orders placed in writing, by teletype, by telephone or cable, verbal agreements, accessory agreements, alteration etc. shall be binding only if acknowledged in writing. Should goods be delivered without a previous Order Acknowledgement, our Dispatch Note takes the place of such a document.

Sketches, drawings, descriptions, weights and measures and other technical data shall serve as an approximate indication only, provided they have not expressly been specified as binding.

### 3. Price

Our prices are net ex warehouse Hamburg and exclude packing, loading, freight, custom clearance, insurance and erection. Only those prices mentioned in our Order Acknowledgement shall be valid.

### 4. Terms of Payment

Primarily, the terms of payments stipulated in our Order Acknowledgement shall be valid. Secondly, the following is valid:

- a) Invoices are payable less 2% cash discount for payment within 8 days of invoice date, or strictly net cash within 30 days.
- b) Settlement of payments due to us by way of charge shall only be permissible in the event of undisputed and legally acceptable claims. Withholding and non-acceptance of the purchaser can only be asserted within the same conditions of contract.
- c) There is no obligation on our part to accept bills of exchange or cheques as means of payment.
- d) In the event of an delay in payment the purchaser shall be liable without formal notice to pay interest on overdue amounts from the date due at 3% above the rate of discount of the German Bank (Bundesbank) valid at this time.

### 5. Delivery Time

Delivery Time commences with the dispatch of our Order Acknowledgement, but not before the date on which the purchaser shall have furnished us with all documents, permits and proof of release, all essential technical points of the order shall have been settled, and any down-payment agreed upon at conclusion of contract shall have been remitted. Delivery time shall be deemed duly observed if the goods have been dispatched up to its date of termination or if the purchaser has been duly informed of dispatch readiness. Force majeure entitles us – even in the case of a guaranteed delivery time – to a reasonable extension of delivery time or, at our discretion, to a total or partial withdrawal from the contract whereby no claims to compensation on the part of the purchaser shall be admitted. Force majeure embraces in particular:

- a) Hindrances through official measure, breakdowns, the need to scrap materials, delays in the delivery of component parts, raw materials, semi-manufactured and manufactured products. Furthermore, delays on the part of sub-contractors, unless we can be held responsible, whether intentionally or through gross negligence, for such circumstances.
- b) Strikes, lockouts and other measures ensuing from labour conflicts within our province or that of our sub-contractors.

We cannot be held responsible for the aforesaid circumstances even if they should occur within the period of a delay already existing on our part. In important cases we shall inform the purchaser without delay of the commencement and termination of such hindrances, except when such hindrances arise from labour conflict measures. Should the purchaser suffer evident damage due to a delay for which we are responsible, he shall be entitled to claim compensation, in as much as this admissible by law, for the delay; no further claims on the part of the purchaser shall be admitted. This compensation shall not exceed 1/2% for each full week's delay, and in total not exceed 5% of the sales price of the part which, owing to the delay, cannot be used in time or in accordance with the contract. Should delivery be delayed at the request of the purchaser or for reasons for which he is responsible, we reserve the right to debit him with all storing expenses incurred by us, commencing on the date of dispatch-readiness advice. Furthermore, we are entitled, after a reasonable deadline has been set by us and not availed of by the purchaser, to dispose otherwise of the goods as we deem fit, and supply the purchaser after a reasonable extension of the term of delivery. We shall not be obliged to adhere to the set of term of delivery if the purchaser has not fulfilled in good time the duties imposed upon him by the contract.

### 6. Passing of Risk/Dispatch

a) In the absence of any form of deviating agreements, dispatch shall be effected at the purchaser's expense and risk. If the purchaser has not defined a particular mode of transport, although he has requested that the goods be dispatched, we ourselves shall determine the means of transport. In such a case the purchaser shall have no right to raise subsequent objections to the amount of transport costs incurred or to the suitability of the mode of transport employed. Insurance cover against theft, breakage, damage by fire and water, damage during

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transport, and other insurable risks shall be effected by us only at the request of the purchaser and his expense.  
b) The risk of the goods is transferred to the purchaser not later than the moment in which they are handed over to the forwarding agent for carter. This also applies when partial deliveries are effected or, in particular cases, when other services such as transport charges, delivery to site or erection are being borne or arranged, respectively, by us.

In the event of a delay in delivery for which we are not responsible the risk of the goods is transferred to the purchaser simultaneously with receipt of our notice of dispatch readiness. The same applies in respect of C.I.F., F.O.B., Incoterms and similar business transactions.

## 7. Guarantee/Liability

We undertake to accept liability for any part of the consignment found to be defective at the moment of passing risk, or for the absence of certain characteristics/properties or services which may have specifically been promised: this excludes the acceptance of all other claims without detriment to clause 8. All claims in respect of false or incomplete consignments, or when defects are obvious, shall be submitted to us in writing without delay by the purchaser, at the latest, however, within 3 days of receiving the consignment. In the case of merchants this obligation is binding in respect of all defects. Violation of the obligation to inspect and reprimand exempts the seller from all liability claims. Later deficiencies shall be reported immediately following their discovery, at the latest, however, within 6 weeks of receipt of consignment.

We undertake to repair or replace at our discretion free of charge any parts of the goods delivered which prove to be damaged or defective. We accept a guarantee or liability for goods supplied by sub-contractors, in as much as this is admissible by law, only to the extent of the sub-contractors' guarantee obligations to us. In the event of miscarriage of repairs or the impossibility to procure replacements the purchaser shall have the right to reduce the contract price or, at his discretion, to demand transformation of contract.

No further claims on the part of the purchaser, especially in respect of compensation or producer's liability, shall be admitted, unless we can be charged with premeditation or gross negligence.

All costs incurred by us as a result of unjustified claims for damages shall be borne by the purchaser.

## 8. Right of Purchaser to Withdraw from the Contract

the purchaser shall be allowed to withdraw from the contract when we shall finally have become incapable of completing the entire contract before passing of risk. This shall also apply in the event of our incapability becoming apparent. Furthermore, the purchaser has the right to withdraw from the contract when, following a delay, we are unable to complete the contract within a reasonable extension of time stipulated by him, although the purchaser, on granting this extension, has not specifically declared that he will not accept the goods after this extension has expired. No further additional claims on the part of the purchaser, particularly the right to withdraw from the contract or claims for compensation for damages of any kind, shall be admitted.

## 9. Lien

The goods supplied by us remain our property until full payment, including all accessory claims, have been received or met, respectively, during the period of lien the purchaser shall be committed to supervise the goods with all due care and to refrain from disposition of any kind, especially the transfer of responsibility, pledging, and the transfer of possession. We shall be entitled to inspect the consignment at any time and withdraw from the contract if, in our opinion, our claim for payment appears to be jeopardized. Any additional costs ensuing from such measures shall be borne by the purchaser. The purchaser is committed to inform us within 24 hours by registered mail of all interventions on the part of third parties, above all in respect of measures of distraint. The purchaser shall bear all charges arising from measures of intervention.

Retailers are allowed to alienate the goods within the framework of orderly business transaction. With each order the retailer is committed to remit to us in advance his claims on his customer in the amount of the sum stipulated in our invoice. This shall also apply when the purchaser has installed our goods into or assembled them with another object, respectively. The purchaser shall be obliged, at our request, to furnish us with all details desired in connection with his transfer. The purchaser shall be entitled to collect the claim up to the moment of our revocation, which shall be possible at any time; he shall at the same time, however, be committed to remit immediately to us the sum received, up to amount of the claim still open.

## 10. Obligation

In the event of any clauses of the aforesaid conditions not being effective, all other conditions remain binding. In place of an invalid condition another effective regulation, resembling the former as closely as possible in its economic purpose, shall be agreed upon.

## 11. Place of Performance/Law Applicable/Jurisdiction

Place of performance of all delivery and payments is Hamburg. The contract shall be governed by the law of the Federal Republic Germany. The same applies to contracts with foreign purchasers. Place of jurisdiction for all legal proceedings shall be Hamburg, provided there is no legal compulsion to the contrary.