

## **General Business Terms of the Grunewald Group**

Status: 06.08.2015

### **§ 1 Validity**

1.

All deliveries, services and offers are exclusively carried out owing to our General Terms of Delivery. These are part of all contracts, which we conclude with our contractual partners (hereinafter also referred to as Buyer) concerning the offered deliveries or services. They shall also apply to all future deliveries, services or offers to the Buyer even if they are not agreed separately once again.

2.

Business terms of the Buyer or third parties shall not apply even if we do not object to their validity separately in an individual case. Even if we refer to a letter that contains business terms of the Buyer or a third party or refers to such, this shall not be deemed a consent to the validity of those business terms.

### **§ 2 Offer and conclusion of contract**

1.

All of our offers are without obligation and non-binding insofar as they are not explicitly marked as binding or contain a certain acceptance deadline. We can accept purchase orders or orders within 14 days after the receipt.

2.

Solely decisive for the legal relationships between us and the Buyer is the contract concluded in writing including these General Terms of Delivery. This depicts all agreements between the contractual parties in full. Oral promises on our part before conclusion of the contract are legally non-binding and oral agreements of the contractual parties will be replaced by the written contract if it cannot respectively and explicitly be derived from these that they will continue to apply as binding.

3.

Addendums and amendments to the reached agreements including these General Terms and Conditions require a written form in order to be valid. The transmission by fax is sufficient in order to safeguard the written form, incidentally the transmission using telecommunications, in particular by e-mail is not sufficient. Details on our part relating to the object of the delivery or service (e.g. weights, dimensions, usage values, load bearing capacity, tolerances and technical data) as well as our presentations thereof (e.g. drawings and diagrams) are only approximately decisive insofar as the usability for the contractually envisaged purpose does not presume a precise correspondence. They are no guaranteed condition features, but descriptions or markings of the delivery or service. Customary deviations and deviations, which are carried out owing to legal regulations or represent technical improvements as well as the replacement of building components by equivalent parts are permitted insofar as they do not impair the usability for the contractually envisaged purpose.

We reserve the right to the ownership or copyright to all offers and cost estimates submitted by us as well as drawings, diagrams, calculations, brochures, catalogues, models, tools and other documents and aids made available to the Buyer. The Buyer may neither make these items as such, nor the contents accessible to third parties, announce these, use or reproduce these himself or through third parties without the explicit consent on our part. He has to return these items in full at the request on our part and to destroy possibly made copies if they are no longer required by him in the proper course of business or if negotiations do not lead to the conclusion of a contract.

### **§ 3 Prices**

The price shall be deemed ex works Bocholt including loading in the plant, however excluding packaging. The value added tax in the respective applicable amount will be added to the prices. All costs of the shipment ex works Bocholt shall be for the expense of the Buyer.

#### **§ 4 Terms of payment**

Invoice amounts are to be paid within 30 days after the due date and receipt of the invoice insofar as not otherwise agreed in writing. Decisive for the date of the payment is the receipt by us. Cheques shall only be deemed as a payment after they have been encashed. If the Buyer does not pay upon maturity then interest is to be paid on the outstanding amounts from the day of the default with 8 percentage points above the base lending rate. The assertion of higher interest and further damages in the event of default shall remain unaffected.

The offsetting against counter-claims of the Buyer or the retention of payments owing to such claims is only permitted insofar as the counter-claims are undisputed or have been declared final and binding.

#### **§ 5 Delivery deadlines**

1.

Announced delivery deadlines are non-binding unless they have been explicitly assured. In case of an additional order, change or supplementation to the original order assured delivery deadlines are also invalid. The delivery deadline shall be adhered to if the object of delivery has left the plant until its expiry. The delivery deadline shall however not begin before the provision of the documents, permits, releases procured by the Buyer as well as the receipt of an agreed down payment. Partial deliveries are permitted. Unforeseeable events, which lies outside of the scope of control of the seller, e.g. interferences to operation, force majeure, strike, late receipt of materials in the plant or at the sub-suppliers – shall extend the delivery time by a reasonable extent until the termination of the stated impediments.

2.

We will not be liable for the impossibility of the delivery or for delays in delivery insofar as these were caused by force majeure or other events, which were not foreseeable at the time when the contract was concluded (e.g. interferences to operation of all kinds, difficulties in the material or energy procurement, delays in transport, strikes, lawful lockouts, shortage of workers, energy or raw materials, difficulties with the procurement of necessary official permits, official measures or the non-delivery, incorrect or late delivery by suppliers), for which we are not responsible. Insofar as such events make the delivery or service much more difficult or impossible and the impediment is not only of a temporary duration, we are entitled to cancel the contract. In case of impediments of a temporary duration the delivery and service deadlines shall be extended or the delivery and service dates shall be postponed by the period of time of the impediment plus a reasonable start-up time. Insofar as the acceptance of the delivery and service is not deemed reasonable for the Buyer as a result of the delay he can cancel the contract by an immediate written declaration towards us.

3.

If we are in default with a delivery or service or if a delivery or service, no matter for what legal grounds, is impossible then our liability is limited to damages according to § 8 of these General Terms of Delivery.

#### **§ 6 Passing of risk**

The risk shall pass to the Buyer by no later than with the sending of the delivery parts. However, if the despatch is delayed due to a conduct of the Buyer the risk shall pass to the Buyer from the time of the readiness for shipment.

## **§ 7**

### **Liability for defects of quality and title**

1.

The warranty deadline is 1 year from the delivery or, insofar as an acceptance is necessary, from the acceptance.

2.

The delivered objects are to be inspected carefully immediately after the delivery to the Buyer or to the third party determined by him. They shall be deemed as approved if we have not received a written report of defects with regard to obvious defects or other defects, which were recognisable with an immediate, careful inspection, within 7 workdays after the delivery of the object of delivery or otherwise within 7 workdays after the discovery of the defect or at the earlier time, at which the defect was recognisable for the customer with normal use of the object of delivery without a more detailed inspection. At our request the object of delivery for which a complaint was made is to be returned to us carriage paid. In case of a justified report of defects we will remunerate the costs of the most reasonably priced despatch route; this shall not apply insofar as the costs are increased, because the object of delivery is situated at another location than the place of the use as intended.

3.

In case of defects of quality to the delivered objects we are initially obliged and entitled to the subsequent improvement or a substitute delivery after a choice that is to be made within a reasonable deadline. In the event of the failure, i.e. the impossibility, unreasonable status, refusal or unreasonable delay in the unreasonable subsequent improvement or substitute delivery the Buyer can cancel the contract or reduce the purchase price by a reasonable amount.

4.

If a defect is due to a fault on our part the Buyer can request damages under the pre-requisites determined in § 8.

5.

The warranty will cease to apply if the Buyer changes the object of delivery without our consent or has this changed by third parties and the remedy of the defect is made impossible or is rendered unreasonably more difficult hereby. In any case the Buyer has to bear the additional costs for the remedy of defects incurred by the change.

6.

A delivery of used objects agreed with the Buyer in an individual case is carried out under the exclusion of all warranty for defects of quality.

## **§ 8**

### **Liability for damages owing to fault**

1.

The liability on our part for damages, no matter for what legal grounds, in particular due to impossibility, delay, faulty or false delivery, breach of contract, breach of obligations during contractual negotiations and illicit act is, insofar as it respectively depends on a fault hereby, limited according to this paragraph.

2.

We will not be liable in the event of simple negligence of our bodies, legal representatives, employees or other vicarious agents insofar as it does not concern a breach of obligations which are essential for the contract. Deemed as essential for the contract are the obligations for the timely delivery and installation of the object of delivery that is free of essential defects as well as obligations for advice, protection and care and attention, which should enable the Buyer the use of the object of delivery as per contract or have the purpose of the protection of the lives and health of personnel of the Buyer or the protection of his property against substantial damages.

3.

Insofar as we are basically liable to damages according to § 8 Par. 2 this liability is limited to damages, which we foresaw as possible consequences of a breach of contract upon conclusion of the contract or which should have foreseen by applying the customary care and attention. Indirect damages and following-up damages, which are the result of defects to the object of delivery, are in addition only capable of compensation insofar as such damages are typically to be expected with the use of the object of delivery as intended.

4.

In the event of a liability for simple negligence our compensation obligation for damages and thus resulting further financial losses is limited to an amount of € per damaging event, even if it concerns a breach of an essential contractual obligation.

5.

The afore-mentioned liability exclusions and limitations shall apply in the same event for the benefit of our bodies, legal representatives, employees and other vicarious agents.

6.

Insofar as provide technical information or operate in an advisory capacity and this information or advice does not belong to the owed, contractually agreed scope of services, this is carried out free of charge and under the exclusion of all liability.

7.

The restrictions of this paragraph shall not apply to the liability owing to wilful conduct, to guaranteed condition features, owing to the injury to life, the body or the health or according to the Product Liability Act.

## **§ 9**

### **Reservation of title**

1.

The reservation of title agreed below serves to secure all respectively existing current and future claims on our part against the Buyer, from the delivery relationship existing between the parties including balance claims from a current account relationship limited to this delivery.

2.

The goods delivered by us to the Buyer shall remain our property until the full payment of all secured claims. The goods as well as the goods covered by the reservation of title, which replace these according to this clause, are hereinafter referred to as reserved goods.

3.

The Buyer shall keep the reserved goods in safekeeping free of charge on our behalf.

4.

The Buyer is entitled to process and sell the reserved goods in the proper business transactions until the occurrence of the case of sale. Pledges and assignments as collateral are not permitted.

5.

If the reserved goods are processed by the Buyer then it is agreed that the processing is carried out in our name and for our account as manufacturer and we shall directly acquire the ownership or – if the processing is carried out from materials of several owners or the value of the processed object is higher than the value of the reserved goods – the co-ownership (fraction ownership) to the newly created object in the ratio of the value of the reserved goods to the value of the newly created object. For the event that no such acquisition of property should occur for our benefit, the Buyer hereby now already assigns its future ownership or – in the afore-mentioned ratio – co-ownership to the newly created object to us as security. If the reserved goods are connected or inseparably mixed with other objects to form an uniform object or if one of the other objects is to be seen as the main object then we assign, insofar as the main object belongs to us, the co-ownership to the Buyer pro rata to the uniform object in the ratio stated in Sentence 1.

6.

In the event of the resale of the reserved goods the Buyer hereby now already assigns as a precautionary measure the thus established claim against the buyer – with co-ownership on our part to the reserved goods pro rata in line with the co-ownership share – to us. The same shall apply to other claims, which replace the reserved goods or are established otherwise with regard to the reserved goods, such as e.g. insurance claims or claims from illicit act with the loss or destruction. We revocably authorize the Buyer to collect the claims assigned to us in its own name. We may only revoke this collection authorization in the event of a sale.

7.

If third parties access the reserved goods, in particular by attachment, the Buyer will inform them immediately about our property and inform us in order to enable us to assert our property rights. Insofar as the third party is not in the position to reimburse us the in court or out-of-court costs incurred in this context the Buyer will be liable for these costs towards us.

8.

We will only release the reserved goods as well as the objects and claims replacing these upon request at our choice insofar as their value exceeds the amount of the secured claims by more than 50 %.

9.

If we cancel the contract in case of conduct of the buyer in breach of the contract, in particular with default of payment then we are entitled to request that the reserved goods are handed over.

## **§ 10 Copyrights**

Plans and technical documents, which are handed over to the Buyer before or after conclusion of the contract, shall exclusively remain our property. Without our consent the Buyer may not use, copy, reproduce or hand these over or announce these to third parties.

## **§ 11 Formal obligation and indemnification declaration (Minimum Wage Act, MiLoG)**

The contractor undertakes towards the Grunewald Group (customer) to always comply with the statutory stipulations with regard to the minimum wage according to the MiLoG and to grant and pay all employees assigned in the implementation of the contractual relationships the respective valid minimum wage. The contractor additionally also undertakes to also impose the obligations contained in this declaration in applicable commissioned subcontractors and personnel leasing companies and to monitor their compliance.

For the event that a claim is asserted against one of the companies of the Grunewald Group, which arise from a breach of the MiLoG, the contractor undertakes to indemnify the company concerned of the Grunewald Group as customer in full from claims of third parties and to reimburse all costs of legal prosecution and/or legal defence as well as compensate for each further damage caused by the assertion of the claim and also to indemnify from the payment of fines or reimburse the fine payment in full.

The contractor also undertakes to defend unjustified claims of third parties with regard to the aforementioned rights. If the contractor refuses the indemnification and if he thus leaves the decision to the Grunewald Group whether the third party is entitled to claims then the contractor also has to reimburse the Grunewald Group for the costs incurred by this decision.

## **§ 12 Place of jurisdiction, place of performance, final provision**

1.  
This contract is subject to the German Civil Code and the German Commercial Code. The place of performance for all deliveries and service arising from this contract, also those from cheques or bills of exchange, is the registered seat of the seller. The place of jurisdiction with all disputes arising from the contractual relationship is the registered seat of the seller insofar as the contractual parties are full merchants, legal entities under public law or special assets under public law. The seller is however entitled to file an action at the court of jurisdiction for the Buyer.

2.  
Insofar as the contract or the General Terms of Delivery feature loopholes in the regulations those legally valid regulations shall be deemed as agreed to fill these loopholes which the contractual partners would have agreed according to the commercial objectives of the contract and the purpose of these General Terms of Delivery if they had known of the loophole in the regulations.