

## A. Validity

1. These business conditions shall apply to all our contracts and other services, both now and in the future (hereinafter referred to as "the supply"). They shall be deemed to have been accepted at the latest when an order is made or when a supply is accepted. They may be altered by us at any time. Any conditions to the contrary shall be of no effect, even if we do not expressly object to them; they shall only be valid if we accept them in writing as an isolated case. Any inoperability of any individual provisions shall not affect the validity of the remainder of these conditions.

2. Our supply conditions shall only apply to entrepreneurs within the meaning of Section 14 of the German Civil Code.

## B. Formation of contract

1. Our offers shall not be binding. A contract shall not come into existence until we confirm an order in writing. If we do not confirm an order in writing, the contract shall come into existence at the latest when the supply is performed. In such a case, the delivery note shall be deemed to be a confirmation of the order. Our written confirmation of the order shall exclusively determine the manner and the extent of our supply.

2. We reserve the title and copyright in any cost reductions, drafts, designs or other documents; they shall not be made accessible to third parties except with our consent. Any designs or other documents relating to offers shall be returned to us on demand and shall be returned in any event if the order is not given to us. If we have supplied any items in accordance with any designs, patterns, samples or other documents delivered to us by a customer, the customer shall guarantee that no industrial rights of any third parties are infringed. If any third parties prohibit us, by reference to their industrial rights, in particular from manufacturing or supplying any such items, we shall be entitled, without being obliged to examine the legal position, to cease any further activity in that respect and to demand compensation if we are able to prove that the customer was at fault. The customer shall also undertake to indemnify us immediately against any claims made by third parties in connection with any documents supplied by him.

3. We reserve our rights as to the acceptance of small orders and the setting of minimum purchase quantities or minimum invoice amounts. As a rule, a minimum order quantity of EURO 1000.00 per product group shall apply. We reserve the right to deviate, where it is customary in the trade or technically unavoidable, from any physical or chemical sizes including colours and order quantities by up to 10% depending on the article, and in respect of rubber-metal articles in accordance with VDI 2005 by 20% in their spring characteristics, provided that this is reasonable for the customer. In the case of call orders, we shall be entitled to procure the materials for the entire order and to manufacture the entire order quantity immediately. Accordingly, after the order has been placed, it will no longer be possible for any changes in the customer's requirements to be considered, unless this was expressly agreed.

4. Any agreements made by telephone or orally, prior to making the contract or at the time of doing so, with Phoenix Group employees who have not been granted relevant statutory power to represent the company must be confirmed in writing by the Phoenix Group in order to be effective. After a contract has been made, any oral amendments and additions must be confirmed in writing by the Phoenix Group.

## C. Supply and delivery date

1. Even if we agree a delivery date or a delivery period with the customer, the delivery date shall be deemed to have been agreed only as an approximation, unless we have given express written confirmation of an agreed delivery time or period as "fixed". A confirmed delivery time or period shall be subject to proper, complete and punctual delivery to ourselves. If, before the expiry of the delivery time, the delivery item has left our premises or we have notified the customer that it is ready for shipment, the delivery time will have been complied with. The time for delivery shall not begin running until the customer has properly complied with his obligations such as the provision of technical data and documents, permits and the payment of a deposit or the provision of a guarantee for payment.

2. Any temporary disruptions to production caused by force majeure shall, for so long as they continue, release us from the obligation to supply which we have accepted. That shall also apply if any other unforeseeable disruptions to production exist for which we are

not responsible, in particular in the case of fire, floods, steps taken in industrial disputes, power failure, shortage of raw materials or administrative measures. In the event of claims for compensation on the grounds of delay, impossibility or non-performance, liabilities are delimited to foreseeable typical losses if we, our statutory agents or executive staff are guilty of minor negligence. The limitation of liability shall not apply in respect of losses which are based upon malice or gross negligence. Any statutory right of rescission on the part of the customer if the conditions thereof are satisfied, shall remain unaffected. In the case of orders which involve a number of supplies, any non-performance, defective or delayed performance of any one supply shall not affect the other supplies under the order.

3. Partial supplies are permissible.

4. The goods shall be carried at the customer's risk, irrespective of the place of despatch. If the goods are ready for despatch and despatch or acceptance is delayed for reasons for which we are not responsible, the risk shall pass to the customer on receipt of notification of readiness for despatch.

5. If disposable packaging is used, consisting of paper, jute, film or wood, no charge will be made for this. Any other packaging, in particular special packaging such as wooden or steel drums or iron cores, shall be invoiced at cost price. If conveyor belt drums or cores are returned freight prepaid, credit will be given for four-fifths of the amount invoiced in respect thereof.

6. The return of any goods which have been sold and are free of defects is, in principle, excluded. If exceptionally any goods are taken back, credit shall be given for the net price applicable at the date of their return. If the net price on the date of the supply is less than the net price on the date of the return, credit shall be given for the net price applicable on the date of the supply. This subclause 6 shall not apply in the event of the retention of title being exercised.

7. If an application is made to commence insolvency proceedings, if an affidavit is filed in accordance with § 807 of the German Code of Civil Procedure, if any problems occur with payment or if, after a contract has been made, we become aware of a significant deterioration in the customer's financial circumstances, we shall be entitled to discontinue supplies immediately and to refuse to carry out any current contracts unless the customer effects payment or provides adequate security at our request.

8. Any objects and materials provided by the customer for the performance of the order shall be delivered by him, punctually and in a satisfactory condition, as agreed, free of charge to the premises specified by us together with the agreed additional quantity, alternatively an adequate additional quantity in respect of any wastage. If this is not done, we shall have the right to invoice the customer for any expenses thereby incurred and, at our discretion, to refrain from starting or to suspend the manufacturing of our supply. We reserve the right to charge the expenses of any experimental parts and the tools (moulds, mandrels, nozzles, etc.) necessary to produce them. We shall charge pro rata for the tools necessary for mass production. All tools shall remain our property in any event.

## D. Retention of title

1.a) We shall retain title to all goods supplied by us until all claims, including secondary claims and conditional claims, which we have against the customer arising out of our business connection, have been paid and the bills of exchange and cheques received in respect thereof have been honoured. That shall also apply in respect of claims arising in the future.

b) We shall be entitled to take possession of the goods which are subject to retention of title if the customer defaults in performing his obligations arising out of the business connection. A demand for the goods subject to retention of title to be returned, or the taking possession of such goods, shall not constitute a rescission of the contract, unless we have expressly declared that we are rescinding the contract. We shall be entitled to demand the immediate return of the goods subject to retention of title, whereby any right of lien shall be excluded, unless lawfully established or uncontested counterclaims are involved.

c) Without prejudice to the customer's obligation to pay, we shall be entitled:

aa) to sell the goods taken back by private sale at best, after threatening to exploit them, and to give credit for the proceeds, or

bb) to give credit for the said goods at the contract price, less any discount, rebates or other abatements, and deducting any diminution in value. We shall in all cases additionally be entitled to deduct our expenses for taking the goods back from the credit which is given.

d) The customer shall immediately notify us of any attachment or any other interference with our rights of ownership by any third parties and shall confirm the right of ownership in writing both to the third parties and also to us. The customer shall be prohibited from pledging the goods delivered subject to retention of title or from transferring title to the goods to secure a debt.

e) The customer shall sufficiently ensure the goods which are subject to retention of title, in particular against fire and theft. Any claims under the insurance policy arising out of a loss affecting the goods subject to retention of title shall with immediate effect be assigned to us up to the value of the said goods. The customer shall notify the insurance company of the assignment of the claim.

f) Any treatment and processing of the goods subject to retention of title so that they become a new article shall be effected by the customer on our behalf as the manufacturer within the meaning of § 950 of the German Civil Code without our incurring any obligations thereby. The treated or processed goods shall be deemed to be goods subject to retention of title within the meaning of these conditions.

g) In the event of any combining, blending or mixing with goods which do not belong to us (§§ 947, 948 of the German Civil Code), we shall be entitled to joint ownership of the new article or total quantity in the ratio which the value of our goods subject to retention of title bore, at the time when they were combined, blended or mixed, to the value of the other goods which were combined, blended or mixed. If the customer acquires sole ownership of the new article, the parties to the contract are agreed that the customer shall grant us, in the ratio which the value of the processed or combined, blended or mixed goods subject to retention of title bear to the total value of the new article or the total quantity, joint ownership of the new article or total quantity. The new article which thereby comes into existence shall be deemed to be goods subject to retention of title within the meaning of these conditions. The customer shall keep them safe on our behalf with due business care and shall undertake to give us the necessary particulars for us to exercise our rights and for that purpose shall allow us to inspect his documents.

2.a) The customer shall be entitled to resell the goods subject to retention of title, in the ordinary course of business. Any use of the goods by the customer for the performance of works contracts or contracts for work and materials shall be on an equal footing with a resale. Any claims on the part of the customer arising out of the resale of the goods subject to retention of title shall, together with any associated rights, be assigned to us with immediate effect, irrespective of whether or not the goods subject to retention of title are resold before or after being treated, processed, combined or blended and irrespective of whether they are resold to one or more purchasers. If the assigned claim against the third party debtor is included in a current account, the agreed assignment shall also relate to any claims arising from the current account. The assigned claims shall serve as the guarantee of all our rights and claims under D.1.a).

b) In the event that the goods subject to retention of title are sold together by the customer after being combined, blended, treated or processed, the assignment to us of the claim for the purchase price in accordance with D.2.a) up to the amount of the contract price of the goods subject to retention of title shall be deemed to have been agreed. It shall also be deemed to have been agreed that, in addition to the said resale price, a claim amounting to 10% of our contract price has been assigned, which shall be applied in settlement of interest and costs after the amount has been received, credit being given for the unused amount. If the customer, in addition to selling the goods subject to retention of title, performs a connected service and does not distinguish between the goods subject to retention of title and the service in the invoice which he renders to the purchaser, thus invoicing for a total price, that price shall be assigned to us up to the amount of our sale price.

c) If the goods subject to retention of title are used by the customer to perform a works contract or a contract for work and materials, the claim arising out of the works contract or the contract for work and materials shall to the same extent be assigned to us in advance as provided under D.2.a) and b).

d) The customer shall only be entitled and empowered to resell or otherwise use the goods subject to retention of title on condition that the claims specified under D.2.a) and b) shall be transferred to us and that the name of our product is given in the customer's copy invoices, delivery notes and other documents. He shall not be entitled to dispose of the goods subject to retention of title in any other way.

e) The customer shall be empowered to collect debts resulting from the resale, in spite of the assignment. Our authority to collect the debt shall not be affected by the authorisation given to the customer to collect it. We will however not collect the debts ourselves if the customer duly complies with his payment obligations to us. We shall be entitled to revoke, with immediate effect, the authorisation given to the customer to resell the goods subject to retention of title and to collect the debts assigned to us, if the customer defaults on payments to us or finds himself in difficulties with regard to payment because of a substantial deterioration in his financial position. If a petition is brought to commence insolvency proceedings relating to the customer's assets, or if any payment is discontinued, or if an affidavit is filed under § 807 of the German Code of Civil Procedure or if, in connection with payment difficulties, a change occurs in the ownership of the customer's company, the authorisation for the reselling of the goods subject to retention of title and for collecting the debts assigned to us relating to the goods subject to retention of title shall automatically expire. If we have revoked the customer's authorisations to resell the goods subject to retention of title or if they have automatically expired, the customer shall be obliged to return the said goods to us immediately and to procure direct possession for us ourselves or for an agent authorised by us. In this connection, the customer shall notify us of the assigned debts and of the debtors who owe them, give us all information necessary for collection purposes, hand over the relevant documents and give the debtors notice of the assignment. The customer shall bear any expenses arising from the repossession of the goods subject to retention of title.

3.a) The retention of title in accordance with the above provisions shall continue to exist if individual debts owed to us are included in a current account and the balance is struck and confirmed. The retention of title shall then extend to the claim for the balance of the current account.

b) The retention of title in accordance with the above provisions shall expire if all debts shown above under D.1.a) have been satisfied. The title to the goods shall then pass to the customer and the assigned debts shall belong to him.

4. If the realisable value of all securities existing for our benefit exceeds our total claims by more than 10%, we shall be obliged, to that extent, to release securities at our option, on being requested to do so by the customer.

## **E. Prices and payment**

1. Supply, service and invoicing shall be effected at the prices and on the conditions applicable on the date when the goods were despatched or collected, unless otherwise agreed with the customer. Any changes in the costs of raw materials, pay, power and other costs which were not foreseen and for which we are not responsible shall entitle us to corresponding price adjustments. We shall supply our immediate purchasers postage prepaid, carriage prepaid to any German general goods station or carriage prepaid by another customary means of transportation, at our option. If more rapid shipment is required (e.g. air freight, express), the customer shall bear the difference between the expenses for the cheapest method of shipment and the higher expenditures. Haulage shall be for the customer's account. No refund will be given for self-delivery. Unless otherwise agreed, we shall be at liberty to supply ex works or ex branch office.

2. All payments by the customer shall be made in EURO.

3. Our invoices shall be payable immediately and on strictly net terms, postage and expenses paid, unless we have tendered on a different basis. The customer shall be charged EUR 3.00 by us in respect of any formal notice served, except for a first reminder on grounds of delay, unless the customer proves that no loss at all has occurred or that any loss is substantially less than the flat-rate amount. We reserve the right to make additional claims for compensation.

4. A discount for cash shall only be given if all payment obligations due in respect of previous supplies have been satisfied and the invoice amount reaches us in cash or is credited to our account punctually by the said dates when payment is due. A payment by bill of exchange cannot therefore lead to a

cash discount being given; in the case of a payment by money transfer, and in particular also in the case of payment by cheque, it will depend in each case upon the date when the credit is made. In the case of a payment or a credit which is subject to a reservation, a condition or other restrictions, no discount can be given. The risk of the method of payment shall be borne by the customer.

5. Credit can only be given for bills of exchange or cheques subject to proper receipt of the full amount. We reserve our rights as to the acceptance of foreign drafts or promissory notes. Any cost or discount charges shall be for the customer's account. We shall not provide any guarantee in respect of presentation or protest. If a protest is made in respect of a customer's own bill of exchange or if any protested foreign bills of exchange are not immediately covered, we shall be entitled to return any bills of exchange which are still current. At the same time, all debts owed to us shall become payable. Antedated cheques will not be accepted.

6. The date of receipt of payment shall be deemed to be the day on which the amount reaches us or is credited to our bank account. The risk of the method of payment shall be borne by the customer. If the customer delays in making payment, we shall be entitled, for the duration of the delay, to charge interest at 8% p.a. above the basic interest rate. The right to make additional claims for compensation shall not be limited thereby.

7. We may additionally at our option, in the event of delay in payment by the customer, make any remaining outstanding instalments of the purchase price or any other claims outstanding against the customer payable, and we may also make any further supplies under this contract or under any other contracts dependent upon prior provision of security or upon concurrent payment for any supply. If the customer fails to comply within a reasonable period with our demand for an advance payment or the provision of security, we shall be entitled to rescind the contract and charge the customer for the costs incurred up to that date including loss of profit.

8. We shall not pay interest on any advance or instalment payments.

9. The customer shall not be entitled to set off or withhold any payments unless his counterclaim is undisputed by us or has been legally established. Any deductions which are not expressly agreed shall not be recognised; claims under guarantee shall remain unaffected.

10. Payments shall only discharge debts if they are made to the account notified by us for invoice payments or to employees of our company whom we have authorised to receive payment.

## **F. Guarantee**

1. In respect of our goods and services, the statutory duties of examination and complaint shall in any event apply to merchants.

2. Entrepreneurs who are not merchants must notify us in writing of any apparent defects within two weeks of receipt of the goods; the making of a claim under the guarantee shall otherwise be excluded. The sending of notice at the proper time shall be sufficient for the purposes of compliance with the time limit. The entrepreneur shall bear the full burden of proving all the requirements of the claim, particularly the fault itself, the date on which the fault was noticed and the making of the complaint at the proper time.

3. In the case of products supplied by us by agreement as new goods, the guarantee period shall be one year; in respect of goods supplied by us by agreement otherwise than as new goods, no guarantee obligation shall exist; the following terms shall apply to claims for compensation. The customer shall only be entitled to make claims for compensation in respect of a warranted characteristic if the provision of a warranty was intended to protect the customer against precisely the loss which has occurred. Any further claims for compensation under the guarantee, with the exception of claims for loss of life, physical injury or damage to health for which we, our statutory agents or vicarious agents are responsible shall be excluded, if we, our statutory agents or our vicarious agents are guilty of minor negligence, unless the losses are foreseeable, typical losses arising from the breach of substantial contractual obligations; claims for compensation shall not be excluded if we, our statutory agents or vicarious agents are guilty of malice or gross negligence.

4. For the purposes of recourse claims by the purchaser pursuant to the rules relating to the purchase of used goods, the provisions of subclauses 2 and 3 shall only apply in respect of claims for compensation.

5. Any information given by us regarding goods or services supplied, the purpose for which they are to be used, e.g. measurements, weights, hardness, values in use, shall only constitute descriptions or characterisations, not warranted characteristics, and they shall only be regarded as approximate; any deviations which are customary within the industry shall be reserved, unless otherwise agreed. Any warranted characteristics must be expressly individually designated as such in writing. Deviations from samples or from previous supplies shall be avoided, so far as technically feasible. We reserve the right to make alterations within the scope of what is reasonable for the customer, in particular if they assist technical progress and provided that the goods supplied are not substantially altered. A claim under guarantee in accordance with F.1., 2. shall only arise in respect of significant deviations.

6. We shall not be responsible for any defect arising from normal wear and tear or from damage resulting from improper handling which did not occur at our premises, especially storage or if the defect was caused by a use of the goods which was not in accordance with the contract and to which we did not give our written consent in this particular case.

## **G. Liability**

The following shall apply with respect to entrepreneurs:

1. In accordance with a longstanding practice of our industrial sector, all claims for compensation by the customer, whether in contract or in tort, irrespective of their nature or their legal basis, e.g. fault in making the contract, actual breach of contract, a prohibited act or an arrangement with joint debtors, made against us, our statutory agents, agents or employees are excluded in every case unless such claims relate to foreseeable and typical losses arising from the breach of essential contractual obligations or else the losses are based upon malicious or grossly negligent breaches of duty by us or our executives. Claims for compensation arising from loss of life, physical injury or damage to health for which we, our statutory agents or vicarious agents are responsible shall not be affected by this exclusion of liability.

2. This regulation of liability shall also apply in respect of our advice, whether given orally or in writing or by means of experiments or otherwise; in particular, the customer is not released from responsibility for checking that the supply is suitable for the purposes for which it is intended to be used.

3. Any claims under the German Product Liability Act shall remain unaffected by this exclusion of liability.

## **H. Place of performance, jurisdiction, applicable law**

1. The place of performance shall be Hamburg-Harburg.

2. As against merchants, the jurisdiction for any claims arising from the business relations, and in particular from our supplies, shall be Hamburg-Harburg, even if sales or supplies are undertaken by a different branch office. This jurisdiction, which shall in particular also apply to collection proceedings, shall also be applicable for any disputes regarding the creation and effectiveness of the contractual relationship. We shall however also be entitled to commence proceedings against the customer in the courts which have jurisdiction for his registered office. If the customer's registered office is outside the Federal Republic of Germany, we shall at our option also be entitled to have any disputes arising out of this contract or its effectiveness finally decided in accordance with the conciliation and arbitration procedure of the International Chamber of Commerce in Paris, by one or more arbitrators appointed under this arbitration procedure, to the exclusion of the courts. The arbitration tribunal shall be located in Hamburg.

3. The law of the Federal Republic of Germany shall apply exclusively. The application of the United Nations Convention on Contracts for the International Sale of Goods shall be excluded.