

# **Standard Terms & Conditions of Sale of JOHS. THOMS GmbH & Co. KG**

## **1. General**

The following Terms & Conditions of Business shall apply to any current and future offers/quotations made by us and to contracts with a commercial counterparty (referred to hereinafter as the Purchaser). Any derogations from these Terms & Conditions of Sale shall require the express agreement of the parties. Any Purchasing Terms & Conditions or other Terms & Conditions of Business of the Purchaser shall not be accepted.

## **2. Offers/quotations**

2.1. Any offers/quotations made by us shall remain subject to change and non-binding until the conclusion of a contract.

2.2. Any orders submitted by the Purchaser shall be binding on the Purchaser. A contract shall come into being when we give written confirmation of the order or complete the delivery or the provision of the service.

2.3. No information stipulated orally nor the information stipulated in our documentation shall contain any warranties. Information relating to the condition of the items delivered shall be for the purposes of specification only and shall not constitute any warranty. Nor shall we give any warranty in respect of the characteristics of samples or specimens.

## **3. Deliveries, delivery periods and transfer of risk**

3.1. Deliveries of goods shall be made EXW (Incoterms 2000), to the extent that no provisions are agreed to the contrary. If it is agreed in individual cases that we shall be responsible for shipping, the goods shall be shipped at the risk of the Purchaser by a means of transport selected by us at our complete discretion. If goods which have been notified as ready for shipping are not collected in accordance with the contract, risk shall be transferred to the Purchaser on notification of the goods' readiness for shipping and the purchase price shall be due and payable.

3.2. All specified delivery periods shall be considered approximate. All agreements concluded for the delivery of or from lots to be offloaded or floating or rolling goods shall be subject to correct and timely procurement by us.

3.3. The timely and unconditional issue of an import licence shall be a pre-condition for all contracts for goods, the delivery of which into the domestic customs area requires such import licence. Should the licence not be issued for reasons which are not attributable to us, the Purchaser shall not be entitled to demand the execution of the contract in the domestic customs area.

3.4. We shall be entitled to make partial deliveries, to the extent that it is reasonable to make such deliveries to the Purchaser.

3.5. The Purchaser shall check and issue a receipt in respect of the delivery documentation. Any reservations shall be noted on the delivery documentation and notified to us immediately in writing. Otherwise the delivered quantity in respect of which a receipt is given shall be deemed to have been accepted.

3.6. Deliveries which contain up to 10% more or less than the ordered quantities shall be accepted by the Purchaser as in accordance with the contract.

3.7. Delays in delivery attributable to force majeure, unforeseeable difficulties as the result of shortages of raw materials, the limitation or the shutdown of operations, measures implemented by the authorities or to other events which are not attributable to us, shall lead to an appropriate extension of the delivery period. The same shall apply in the case of delays in delivery due to the occurrence of such events within the business of our suppliers. Industrial action, including strikes and lawful lock-outs within our business or the businesses of our suppliers shall also constitute force majeure. If as the result of such events delivery subsequently becomes impossible or unreasonable for one of the parties, both of the parties shall be entitled to withdraw from the contract.

3.8. In the event of a delay in delivery, after having stipulated an appropriate period and if delivery is not made within such period, the Purchaser may withdraw from the contract. Moreover, liability for delay or the inability to make delivery shall be governed by clause 8 of these Terms & Conditions.

## **4. Prices and price changes**

Our prices are quoted net / no tax paid. Any new or increased supplementary costs incurred after the conclusion of a contract, such as duties and taxes, shall be borne by the Purchaser. Any reductions on such grounds shall benefit the Purchaser. The prices shall not cover any collection of packaging or empty containers.

## **5. Terms and conditions of payment, set-off and right of retention**

5.1. For the purposes of performance and the timeliness of payment, the date of receipt of payment in our account shall be the applicable date.

5.2. We shall not be obliged to accept cheques and banker's drafts. Payment by way of cheque and/or banker's draft shall only be accepted on account of performance.

5.3. Even if a date for payment has been agreed, we may demand the immediate payment of all sums due and/or make our deliveries contingent upon advance payments or the provision of appropriate security, if a fundamental worsening of the earning capacity and financial circumstances of the Purchaser has occurred or if such worsening may be anticipated in the future on the basis of objective criteria. In the event of a deferral or an agreement in relation to payment by instalments, all sums payable by the Purchaser shall be immediately due and payable if the Purchaser definitively refuses to make one payment or if the Purchaser is in arrears with one payment by more than 14 days. This provision shall not apply if the due amount constitutes less than 10% of the outstanding sums.

5.4. The Purchaser shall not be entitled to set off any counter-claims, unless it is a question of an undisputed, acknowledged or judicially determined claim of the Purchaser. The Purchaser shall only be authorised to

exercise a right of retention if its counter-claim is based on the same legal relationship.

5.5. Should a date agreed for payment not be complied with, the Purchaser shall be in arrears even in the absence of notification. In such a case we may apply interest at a rate of up to eight percentage points above the applicable base rate (section 247 of the German Civil Code).

## **6. Retention of title**

6.1 The delivered goods shall remain our property until complete payment of the sums due. Should a current account relationship exist, the retention of title shall also apply as security for all claims arising from the commercial relationship and for our claim in respect of payment of the balance. Payment shall be deemed to have been made to us with the effect of a release when the full amount has been received by us. Any processing or adaptation of the goods to which title is retained shall occur without this giving rise to any obligations for us.

6.2. Should the goods delivered by us be processed, amalgamated or mixed with goods which belong to a third party, we shall have joint title to the new item or the mixed stock in accordance with the ratio of the value of our goods to which title is retained to the remaining goods at the time of the processing, amalgamation or mixing. Should the Purchaser acquire sole title to the new item, it hereby assigns to us joint title to the new item in accordance with the invoice value of our goods to which title is retained to the value of the remaining goods at the time of the processing, amalgamation or mixing and shall preserve such new item for us with the due care of a careful merchant.

6.3. The Purchaser, which shall only be entitled to further dispose of the delivered goods in the ordinary course of its business and only then when any claims arising from such on-sale are assigned to us, hereby assigns to us all claims arising from such on-sale, irrespective of whether or not the on-sale occurs without or after any processing or amalgamation or mixing of our goods with other goods. We hereby accept such assignment. The value of the goods to which title is retained shall be the amount invoiced by us plus a supplement of 10% by way of security, which shall not however be applied to the extent that it conflicts with the rights of any third party.

6.4. In the event of the on-sale of our goods after their processing, amalgamation or mixing or the on-sale of the new item created after such processing, amalgamation or mixing, any rights against the party acquiring from the Purchaser shall be assigned to us in the amount of the invoice value of our processed, amalgamated or mixed goods or only in the amount which corresponds to our share of the co-ownership rights, should such amount be lower. This provision shall also apply in the event of any disposal after our goods, as the result of any amalgamation or processing, have become an integral part of another item.

6.5 The Purchaser shall be authorised by us to enforce any assigned claims. We may revoke such authorisation, should the Purchaser not comply with the contractual obligations owed to us. Any collection costs shall be borne by the Purchaser. The Purchaser must notify us immediately of any restriction or of any other impairment of our rights. The Purchaser shall be prohibited from pledging or transferring by way of security the goods to which title is retained by us, and from entering into any

agreement prohibiting assignment or from any assignment without our consent in the context of a factoring. Should the value of the security interests granted to us exceed the sums payable to us by more than 10% in total, we shall be required at the request of the Purchaser to release the security interests of our choice. Upon payment of the sums payable to us, title to the goods to which title was retained and the assigned claims shall be transferred to the Purchaser.

## **7. Liability for defects**

7.1. The Purchaser shall be obliged immediately to inspect at its own cost the delivered goods and to notify us in writing immediately of any defects, non-compliant deliveries, and of any non-compliant deliveries or insufficient volumes which cannot be accepted. Such notification shall be subject to an exclusionary period of three days from the date of receipt of the delivery. Hidden defects must be notified to us in writing and at the latest seven days from the date of their discovery. An investigation by us of the defects complained of shall not constitute any waiver of the claiming of a delay in relation to the complaint.

7.2. Any defects in the quality of a partial delivery shall not grant any right to refuse the remainder of the agreed delivery volume, unless the Purchaser is able to prove that the acceptance of only part of the delivery would be unreasonable for it in light of the circumstances.

7.3. We shall at our discretion deliver free of charge replacements for goods or repair goods which are defective on the date of the transfer of risk. Should we permit any period stipulated by us for such delivery of replacements or such repairs to elapse without taking action through our own fault or omission, should such subsequent performance fail definitively or should we repudiate such subsequent performance or should such subsequent performance become impossible for us or unreasonable for the Purchaser, the Purchaser may withdraw from the contract or reduce the purchase price. If the defect is merely insignificant, and should the Purchaser be able to use the goods without suffering any disadvantage, it shall only be entitled to a reduction in the purchase price. This right shall be limited to the affected partial delivery alone, to the extent that such a limitation is not unreasonable for the Purchaser on the basis of the nature of the item. Should the specified delivery volumes not be complied with, the Purchaser shall after the failure of attempts to correct the defect have a claim to an appropriate reduction only. This provision shall not apply if the parameters of performance are expressly guaranteed or if the acceptance of the subject-matter of the delivery is not reasonable in the given circumstances.

7.5. Warranty claims shall be prescribed one year from the date of the commencement of the statutory limitation period. The limitation period in the event of a delivery recourse in accordance with the sections 478 and 479 of the German Civil Code shall not be affected by the provisions of the two paragraphs referred to above. Claims for compensation on the basis of death, physical injury or impairment of health caused by a defect or in accordance with the Law on Product Liability shall also not be limited by these provisions. These provisions shall also not limit any other claims for damages pursuant to the law on warranties in the event of gross negligence, intent or the infringement of material terms of the contract (please see section 8 "Liability" in relation to material terms of the contract) on our part.

## **8. Liability**

8.1. Claims for compensation of any nature – within and outside the context of liability for defects – e.g. pursuant to delay or impossibility, on account of the infringement of any other contractual obligations, or arising from any default on the conclusion of the contract or non-permitted conduct or on any other legal basis, and in particular also on account of damage which is not suffered by the subject-matter of the delivery itself, shall be excluded.

The above exclusions of liability shall not apply:

- in the event of intent or gross negligence on the part of our corporate bodies and employees;
- if any warranties in relation to condition and durability are infringed;
- if death, physical injury or impairment of health is caused as the result of wrongful conduct;
- to liability pursuant to the Law on Product Liability.

8.2. In the event of the wrongful infringement of material contractual terms we shall also be liable; in such a case, liability shall be limited to the type of damage typical for such a contract and which could be reasonably foreseen, in the absence of intent and gross negligence. A material contractual term is within this meaning to be understood as any obligation which makes possible the proper execution of the contract and on compliance with which the Purchaser may duly rely.

## **9. Place of performance, place of jurisdiction and applicable law**

9.1 The place of performance for deliveries shall be the place of dispatch and for payment Hamburg.

9.2. With purchasers who are merchants, legal persons or special funds pursuant to public law, Hamburg is agreed as the place of jurisdiction. We may also commence proceedings against the Purchaser at the Court in the location of its registered office or establishment.

9.3. German law shall apply exclusively and the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.