

#### 1. Scope.

These Terms and Conditions shall apply to all our agreements and deliveries and other services made or furnished our contract partners. We hereby expressly exclude any deviating general terms or conditions proffered by the contract partner. Such general terms and conditions, especially any conditions or terms of purchase, will not become a part of the contract. Our contract partners accept these Terms and Conditions as part of all current and future contract relationships. Our contract partners hereby waive any claim or defense that these Terms and Conditions are not part of any current or future contract.

#### 2. Offer and Formation of Contract.

Our offers are always to be understood as non-binding, and there shall be no contract without our express acceptance.

#### 3. Prices and Payments.

3.1 Our prices are always to be understood exclusive of freight, postage, customs duties and applicable VAT, unless otherwise agreed upon in writing and confirmed by us. Goods will only be insured by us against damage in transit upon express request by our customer, and for account of the customer. In the event that the time between the conclusion of the contract and our delivery of the goods should exceed 4 months, due to causes not attributable to us, we shall have the right to reasonably increase the prices quoted by any rise in cost of raw or auxiliary materials taxes, customs duties and labor costs subsequent to the date of formation of the contract.

3.2 We reserve the right to deliver only as and when payment of the agreed upon prices has been made. Notwithstanding our claim to charge interest on any arrears that are due, in case of default we may claim the legal interest rate of 8% over the applicable basic interest rate. We expressly reserve the right to claim any further damages. Our invoices are deemed to have been accepted if the contract partner does not oppose them in writing within 30 days from receipt of the invoice.

3.3 There is no right to set off amounts due to us against any claim or counterclaim which has not yet been reduced to a final, non-appealable judgment. There shall be no right to withhold amounts in respect of any claim not arising from the same contractual relationship if this claim has not been acknowledged by us and has not yet legally fully vested.

#### 4. Worsening of the Financial Situation of Contract Partner.

4.1 In any of the following events or any other comparable event existing before formation of the contract but brought to our knowledge only after formation of the contract, or arising after formation of the contract, we may request advance payments up to the amount of the agreed upon prices filing of a bankruptcy petition by our contract partner, provided that such petition is not vacated or rejected within 4 weeks of the opening of bankruptcy proceedings, or a filing for bankruptcy is rejected for want of assets; a written credit information of a bank or agency shows that our contract partner is not creditworthy; the appointment of a receiver for all or a substantial part of the contract partner's assets; a levy or attachment on all or a substantial part of the contract partner's assets; an admission by the contract partner in writing that it is unable to pay its debts as they become due; or an assignment by the contract partner for the benefit of creditors.

4.2 If any of the events as aforesaid occurs or if our contract partner does not pay invoices due within a reasonable grace period set by us, we have further the right to inspect the warehouse of our contract partner in order to secure our rights under Section 13 (retention of ownership).

4.3 If in such cases our contract partner fails to meet our request for advance payment or inspection of its warehouse within a reasonable grace period set by us, we are entitled to terminate the contract or to claim damages for non-performance.

#### 5. Default by our Partner in Accepting our Deliveries.

If our contract partner delays in accepting or otherwise fails or refuses to accept our deliveries, in whole or in part, we are entitled, after expiration of a reasonable grace period set by us, either to terminate the contract or to claim damages for non-performance. This shall not prejudice any other claims we may have at law or in equity due to our contract partner's default in accepting our deliveries.

#### 6. Damages for Non-Performance.

In the event we have the right to claim damages for lack of performance, we are entitled to receive 15% of the contract price as liquidated damages without furnishing proof thereof, subject to our contract partner's proof that no, or a lesser, damage, was caused. This shall not prejudice our right to claim actually incurred damages.

#### 7. Illustrations; Indications as to Quality, Characteristics and Dimensions.

Any and all illustrations, indications and descriptions in offers, catalogues, leaflets, price lists, descriptions, illustrations, drawings and similar publications are approximate in nature and given as a general guide only. Provided the contract goods are not changed in a way that materially adversely affects our contract partner, we reserve the right to make modifications to models, constructions and equipment, as well as methods of production. Our indications and descriptions regarding dimensions, characteristics and uses of the contract goods are given as mere product descriptions and do not include a warranty as to any particular characteristics. When submitting orders, the contract partner has to take into consideration that any technical features are state of the art and comply with any applicable legal and technical rules as well as any individual stipulations.

#### 8. Packaging; Shipping and Transfer of Risk.

8.1 Any packaging we provide on a loaned basis shall remain our property. If the packaging is not returned within 3 months, we are entitled to payment equal to the value of the packaging. The risk of loss shall in any event pass to our contract partner when the goods are shipped ex works even if we expressly assume responsibility for freight charges. In case we have no shipping instructions, or deem that a deviation from any shipping instructions is necessary, we may ship in accordance with our reasonable judgment and without any obligation as to selecting the cheapest and quickest shipping method.

8.2 If shipping is delayed due to the request of a contract partner or for reasons attributable to our contract partner, the goods will be stored at the expense and risk of our contract partner. In this case, the risk of loss shall pass to our contract partner with our notification that we are prepared to make shipment. If delivery is to be made by truck to the discharge point, such discharge point must be easily accessible by truck. In such case, the contract partner will be solely responsible for immediate and professional unloading. Any waiting time will be charged by us. We have the right to make partial deliveries.

#### 9. Delivery Times; Delay and Impossibility to Deliver.

9.1 We will attempt to meet stated delivery times. Non-material delays are hereby accepted by our contract partners. Delivery times are only of the essence if this has been confirmed by us in writing. The delivery time starts upon the formation of the contract (unless the contract specifies a later date), but in no event until our contract partner has met its obligations to provide documentation, permits, releases or any agreed upon advance payments.

9.2 If we are late with the delivery or service, or if we are not able to fulfill our duties for reasons attributable to us, our contract partner hereby waives and releases all claims for damages or loss, except as may result from our willful misconduct or gross negligence. This limitation of liability shall not prejudice our contract partner's legal right to terminate the contract, provided that, in cases of delay, the grace period to be granted by our contract partner must be at least six weeks. Any right of our contract partner or us to terminate the contract shall apply only to that portion of the contract that is not yet performed, provided this will not work as an unreasonable hardship upon the party entitled to the termination.

#### 10. Warranty and Indemnifications

10.1 Our products shall be deemed free of defects if they display the agreed upon characteristics at the time the risk of loss passes. Our products shall not be deemed defective if they exhibit insignificant defects or minor variations in quantity. Cylindrical grooves or other grooves, recurring rolling marks, rolling inclusions or imprints as well as variations in color or appearance from different viewing angles, surface dirt, friction points, scuff marks, or bending or folding at the beginning or end of the coil or similar matters shall not give rise to a claim.

10.2 Slight color variations that are typical of the production process and which do not, or only insignificantly, affect our goods, are acceptable. We do not assume any responsibility for color fading.

10.3 A delivery is considered free of defects under the contract if the defective parts do not exceed 5% of the entire quantity delivered. Delivery overages in excess of 10% or delivery shortages of 10% of either quantity or weight of the original order are acceptable and confer no claim. The material used for protection of the goods is included in the weight calculation.

10.4 In case of aluminizing or coating by a third party, we only assume responsibility for our part of the work. A deficiency in output quantities delivered up to 3% of the total input quantities received is customary for the production process and does not give rise to any claim. The quantity we received and ascertained at our plant will be the basis for calculation.

10.5 Claims for defective goods must be reported within 2 weeks of delivery unless the defect was not visible by inspection at the time of the delivery.

10.6 Incorrect usage instructions do not constitute a claim for defective goods. There shall be no guarantee for the accuracy of advertisements made by our suppliers.

10.7 Any valid claim for defective goods shall be limited to fulfillment of our contract obligations. At our discretion, we may either undertake remedial measures to cure any defects or deliver replacement goods. Any remedial measures shall only be performed at the site of our contract partner.

10.8 In case the remedial measures fail twice, our contract partner shall be entitled to either terminate the contract or request a reduction of the purchase price.

10.9 Our contract partners hereby waive and release all claims for damages except for the following:

- claims for bodily harm or injury based on our negligent acts or omissions or those of our agents, employees or contractors;
- claims other than for bodily harm or injury based on our willful misconduct or gross negligence, including that of our management personnel;
- damages as a result of our willful or negligent breach of material contract obligations;
- damages as a result of our willful or negligent breach of pre-contract obligations, provided the breach occurred prior to the inclusion of these Terms and Conditions;
- claims based on product liability laws.

10.10 We shall only be responsible for reasonably foreseeable damages that are proximately caused by our conduct.

10.11 Any claims for damages expire one year after delivery.

10.12 Mandatory product liability laws remain unaffected.

#### 11. Manufacturer's Liability.

Our contract partners shall hold us harmless from, and indemnify us for, all third party claims, damages or losses (including costs of suit and attorneys' fees) based on tortious acts or omissions or product liability laws for defective goods manufactured or delivered by our contract partner if such claims could also be asserted against our contract partner, disregarding any preclusion due to applicable statute of limitation. Our contract partner shall also, upon request, defend us using counsel reasonably satisfactory to us. The aforementioned shall not to the extent any matter arises from our willful misconduct or gross negligence with regard to the defect in question.

#### 12. Proprietary Rights of Third Parties.

If manufacture and delivery are made according to drawings or other information provided by our contract partner which infringe on the rights of a third party, our contract partner shall hold us harmless from all claims by such third party.

#### 13. Retention of Ownership.

13.1 Up to the fulfillment of all our present and future, our contract partner shall grant us the following collateral rights which we may release upon request at our sole discretion, provided their value exceeds our claims by more than 10%.

13.2 Goods we deliver shall remain our property until full payment. Any processing or transforming of goods shall always be made for us as the manufacturer, without establishing any obligation on our part. If the delivered goods are combined with other goods which we did not deliver, we shall acquire proportionate co-ownership in respect of the new goods determined by the ratio of the amount of our invoice to the invoiced amount of the other goods used at the time of the processing. If our goods are incorporated into other movable goods so that they can no longer be separated and so that, by operation of law, the other goods become the main item, it is agreed that our contract partner transfers proportionate co-ownership to us provided the main item is its property.

13.3 Any goods, in which we have retained a property interest, are hereinafter called goods subject to ownership retention. Our contract partner shall have the right to sell the goods subject to ownership retention in the ordinary course of business provided he equally stipulates with its buyer that the contract partner retains ownership of the goods until full payment. Our contract partner is also entitled to further process and transform the goods subject to ownership retention in the ordinary course of business.

13.4 Our contract partner assigns to us any claims it may have resulting from the sale, transformation or processing of the goods subject to ownership retention, in whole or proportionately as determined by our co-ownership interest in the sold, transformed or processed goods. This shall also apply if our ownership rights, as well as those of our contract partner, no longer exist. If such claims are stated in a current account such assignment shall include all account balances.

13.5 We authorize our contract partner, subject to revocation at our sole discretion, to collect on any assigned claims. Our contract partner shall immediately transfer to us all collected amounts once our receivables become due. If our receivables are not yet due, the collected amounts shall be recorded separately by our contract partner. Upon our request our contract partner shall disclose the debtors of the assigned claims and shall inform them about the assignment; we may also inform such debtors about the assignment.

13.6 The rights of our contract partner to resell, use or process the goods subject to ownership retention as well as the authority to collect on any assigned claims shall automatically cease in case of suspension of payment or filing of a petition for bankruptcy or the opening of bankruptcy proceedings, or any of the events mentioned in Section 4.1 above, even without our express revocation of these rights. The same shall apply in the case of litigation over a check or draft. Our contract partner shall inform us immediately about any third party claims against the goods subject to ownership retention or the assigned claims. Any expenses, including costs of suit and attorneys' fees, arising from interventions against, or the defense of, such third party claims shall be borne by our contract partner.

13.7 Our contract partner is obligated to fully insure the goods subject to ownership retention against the risk of fire and theft. In case our contract partner breaches any of its obligations, especially in case of delay in payment, we are entitled to take possession of, at the expense of our contract partner, the goods subject to ownership retention, or, if necessary, to request assignment of all claims for taking possession of the goods subject to ownership retention that our contract partner may have against third parties. If we take possession of the goods subject to ownership retention or assert a lien on same, we are not deemed having terminated the contract, subject to applicable consumer credit laws.

#### **14. Severability; Place of Performance and Competent Court; Applicable Law.**

14.1 Should any provision of our Terms and Conditions be invalid in whole or in part, it shall be replaced by a legally effective provision that, taking into consideration the justified interests of both contracting parties, comes closest to the meaning of the invalid provision.

14.2 Place of performance, and location of the solely competent court, for the fulfillment of deliveries and services and all disputes arising between the parties, respectively, shall be Hagen Westf. / Germany.

14.3 The relationship between us and our contracting partner shall be governed exclusively by the law of the Federal Republic of Germany exclusive of the international law on sales (CISG).

#### **Supplemental Terms and Conditions for Transactions in the United States**

For our business transactions in the United States (i.e., when we deliver to a customer in the United States), the above Terms and Conditions shall be supplemented as follows:

##### **Section 6 shall read as follows:**

In the event we have the right to claim damages for lack of performance, we are entitled to receive 15% of the contract price as liquidated damages without furnishing proof thereof, subject to our contract partner's proof that no, or a lesser, damage, was caused. This shall not prejudice our right to claim actually incurred damages. The contract partner agrees that our actual damages will be difficult to calculate with precision, and that the liquidated damages set forth above is not a penalty but a reasonable forecast of the actual losses we would incur as a result of the contract partner's lack of performance. Any liquidated damages assessed may be withheld from any payment to which the contract partner may otherwise be entitled.

##### **In addition to Section 10:**

Subject to the express provisions in these Terms and Conditions, all warranties, conditions or other terms, whether express or implied or arising by statute or common law, are excluded to the fullest extent permitted by law. In particular, we do not make any warranty, express or implied, of merchantability or fitness for a particular purpose. There are no warranties which extend beyond the provisions of these Terms and Conditions for Sale.

Under no circumstances, shall we be liable to our contract partner for any consequential, indirect or special losses or damages including lost profits and punitive damages, costs, expenses or other claims for consequential compensation, regardless of whether the alleged loss or damage was caused by our negligence or the negligence of our employees, officers, directors or agents, which arise out of or in connection with the supply of the goods or their use or resale by our contract partner.

We shall not be liable to the contract partner or be deemed to be in breach of contract by reason of any delay in performing, or any failure to perform, any of our obligations in relation to the goods, if the delay or failure was due to any cause beyond our reasonable control. Without limitation, the following shall be regarded as causes beyond our reasonable control:

- Force majeure, explosion, flood, tempest, fire or accident;
- War or threat of war, sabotage, insurrection, civil disturbance or requisition;
- Acts, restrictions, regulations, laws, prohibitions or measures of any kind on the part of any governmental or local authority;
- Import or export regulations or embargoes;
- Strikes, lock-outs or other industrial actions or trade disputes (whether involving our employees or the employees of a third party);
- Difficulties in obtaining raw materials, fuel, parts or machinery;
- Power failure or breakdown in machinery.

##### **In addition to Section 13:**

We shall retain, and our contract partner hereby grants, a security interest in any goods (and the products and proceeds thereof) pending final payment therefor. We shall have the rights and remedies of a secured creditor under the applicable Uniform Commercial Code of the State of Georgia with respect to the goods. Our contract partner agrees to execute and deliver, and agrees that we may prepare, execute and file in the appropriate offices and records, such financing statements as are necessary to perfect our security interest in the goods. Pending final payment, our contract partner shall keep the goods identifiably separate from any other property in its possession and shall keep the goods properly stored, protected and insured. Pending final payment, we shall have the right to enter any premises under our contract partner's control where any goods are located.

#### **Section 14 shall read as follows:**

14.1 The parties are entitled to exercise all remedies available at law or in equity which are cumulative and may be exercised at any time and in any combination allowed by law.

14.2 If any provision herein shall be held to be invalid, illegal or unenforceable, the affected provision shall be replaced by a provision that is legal and, considering the parties' intentions, comes closest to the meaning of the affected provision. The invalidity, illegality or unenforceability of any of the terms of these Terms and Conditions shall not affect any other provision contained herein.

14.3 Subject to any other provision herein, these Terms and Conditions shall be governed by the laws on the sales of goods and services (i.e., the Uniform Commercial Code) of the State of Georgia without reference to its conflict of laws rules. Any and all claims, disputes and/or contentions arising hereunder, out of or in connection with this Agreement shall be subjected to good faith negotiations between the parties hereto in an attempt to settle all such claims, disputes and/or contentions before any alternative method of dispute resolution is employed.

Any dispute related to this Agreement shall be decided by binding arbitration using the Commercial Arbitration Rules of the American Arbitration Association. Arbitration proceedings shall be conducted in Atlanta, Georgia. The arbitration panel shall not award any special, incidental, consequential or punitive damages or damages for lost profits. The party prevailing in any such proceeding shall be entitled to recover from the other party all costs of suit and actual and reasonable attorneys' fees it incurs. The final decision of the arbitration panel may be filed in any court having jurisdiction.