

### I. Scope of application

1. All offers and agreements are governed exclusively by the following terms and conditions. Any terms and conditions of the Buyer that add to or deviate from our own shall not be applicable.
2. Our Terms and Conditions apply only to persons who, on concluding a legal transaction with us, are acting in their vocational capacity as tradespersons or self-employed persons (entrepreneurs within the meaning of Section 14 German Civil Code [*Bürgerliches Gesetzbuch* – BGB]) and entities and separate assets under public law.

### II. Conclusion of contract, condition of our goods

1. Our offers are non-binding as a basic principle. A contract is not deemed as effective until the Buyer has received our written confirmation of order, or we have begun to perform the deliveries or services. Our offer, our confirmation of offer and these terms and conditions are authoritative with regard to the content of the contract. Any subsequent amendments, additions or side agreements, in particular drawings, figures, technical data, measurements, weights or other specifications are to be agreed in writing.
2. The contractually agreed condition of our goods includes only those properties and features that are specified in our offer or in our confirmation of order.
3. Declarations concerning the condition and durability of the goods, in which we grant the Buyer additional rights in a warranty case without prejudice to his statutory claims, shall constitute a guarantee of condition and durability within the meaning of Section 443 BGB only on condition that we have expressly designated them as a guarantee.
4. The quality and dimension of materials we supply are determined exclusively in accordance with international materials standards. If no such standards exist, standard business practice shall apply.
5. Excesses or shortages in quantities are permitted in accordance with effective standards and established practices. For tubes +/- 10%, at least one random length.

### III. Delivery, passing of risk

1. Deliveries shall be made ex works (EXW - Incoterms 2010).
2. Part-deliveries are permissible within reasonable scope unless explicitly excluded. This shall also apply to excess or short deliveries common within the sector.
3. Unless explicitly agreed otherwise, the goods shall be delivered in unpackaged form and without protection against rust. Any agreed packing shall be provided against a standard surcharge and in the form commonly used in trade. Any such agreement must be recorded in writing. Packing material will not be taken back.
4. In the absence of a separate agreement, the manner and path of dispatch are left to our discretion.
5. The risk of accidental loss of or accidental damage to the goods shall pass to the Buyer as soon as we have handed over the goods for transportation to a forwarder, to the carrier or to any other person or agency designated to execute the shipment, at the latest, however, when the goods leave our factory or warehouse. If the goods are ready for dispatch and dispatch is delayed through no fault of our own, the risk is deemed to have passed to Buyer when notification has been received of readiness for dispatch. In such a case we are entitled to dispatch the goods at our discretion and at the expense and risk of the Buyer, or to store goods at our discretion and to invoice them immediately.
6. If the goods are dispatched using loading aids (pallets, etc.), the Buyer is obliged to return the same quantity and quality of loading aids to us at no charge. Should the Buyer fail to meet this obligation even after a deadline of one week has been set, he shall owe us the amount required to procure the same quantity and quality of loading aids.

### IV. Delivery periods, impediments to delivery, rights of withdrawal

1. Dates for delivery and performance of services are binding only on condition that we have confirmed this explicitly. Delivery dates refer to dispatch ex works, or, in the case of delivery to the Buyer's place of business (*'frei Haus'*), the date of receipt at the Buyer's place of business.
2. We are not deemed as defaulting on our obligations to deliver and perform until expiry of a reasonable extension of term that we have been granted.
3. Cases of force majeure (unforeseen circumstances and events occurring through no fault of our own that we cannot have avoided by

exercising due diligence, e.g. strike and lock-out, war, fire, traffic disruptions, scarcity of raw materials, official measures) shall interrupt our delivery and service obligations for the duration of their impact, even when we have already defaulted on delivery. If we have concluded a congruent coverage transaction with our own supplier in timely manner, any delivery dates we specify are subject to the proviso that we ourselves are properly supplied in timely manner.

4. In the cases referred to in clauses IV. 3 and 4, we shall be entitled to withdraw from the contract if we have informed the Buyer without delay about a case of force majeure having arisen as detailed in Section IV.3. hereof, or have informed the Buyer about unpunctual or improper delivery in the cases detailed in Section IV.4., and we reimburse the Buyer without delay for any counter-performance he has rendered. We expressly commit ourselves to inform and reimburse the Buyer without delay, in accordance with sentence 1 of this clause.

5. In the event that delivery is delayed for reasons for which we bear responsibility, our liability shall be determined exclusively by the statutory regulations.

6. An acceptance, without reservations, of delayed deliveries or services shall constitute a waiver by the Buyer of his contractual or statutory claims unless the Buyer notifies us of such delay within 14 days after delivery.

### V. Prices and payments

1. Unless otherwise and explicitly agreed, our prices are ex works, for unpacked goods, and exclusive of value added tax. Ancillary transport expenses (e.g. taxes, customs duties, freight charges, fees, other levies, insurance premiums, etc.) as well as any materials required for dispatch must be paid separately by the Buyer. If the goods are shipped by sea, prices are FOB (Incoterms 2010) at the port of departure. If a price has not been explicitly agreed, the applicable prices shall be those in our currently valid price list.

2. In the case of carriage paid deliveries ex warehouse, the prices are for delivery, unloaded, to the place of use via hard roads.

3. Once we have transferred the purchased object to the Buyer or the transporter and our invoice has been received by the Buyer, our invoices are due for immediate payment onto a bank account we specify, without deductions of any kind. The criterion for timely payment is the date on which the amount is credited to our account.

4. Payments by the Buyer are always credited against the oldest debt, firstly against any expenses incurred (including any intervention expenses) and then against any interest payable.

5. Any bills of exchange or cheques shall be accepted only as payment pending full discharge of the debt. We are under no obligation to accept bills or cheques.

6. If it is common practice in the trade, in the case of goods invoiced by weight, for the weight as determined at the works by the check weigh man to be authoritative, then the said weight shall apply. Proof of weight is deemed provided on presentation of the weighing note, under exclusion of any other proofs. Bundled goods are weighed gross for net, including lashing materials.

7. If, after conclusion of contract, taxes, any customs duties, freight charges, fees or other levies of any kind that affect the price of the goods are increased or newly imposed, or if such costs rise through no influence of our own, the Parties shall, negotiate an appropriate increase in the purchase price at our request. If no agreement is reached within 30 days after notifying of our request, we shall have the right to withdraw from the contract.

8. Should Buyer default on any performance under the contract, we shall have the right to set the Buyer a 14-day extension and, if said deadline expires to no avail, to withdraw from the contract or to sell or auction the goods and to demand compensation for non-fulfilment of the contract. The same principle shall apply if the Buyer is in default on part of a performance.

9. In the event of defaulted payment, the Buyer must pay us default interest at nine percentage points above the basic rate. The same obligation shall apply if payment is made later than ten days after receipt of invoice.

10. The Buyer is permitted to retain payments or to set-off against counter-claims only and insofar as the counter-claims are due for payment and are undisputed or have been established by a court of law in a final and absolute decision.

11. We have the right to set-off our claim to payment against those of the Buyer and against those of companies with which the Buyer is corporately

affiliated, regardless on what legal grounds – as settlement of interest, if necessary -, even if the respective claims are due at different dates. Where relevant, this entitlement on our part shall relate to the debit balance only.

12. Claims against us may not be assigned except with our consent. This shall not apply to a monetary claim.

**VI. Rights and duties of the Buyer in the case of defects**

1. The purchaser has to give notice of a defect in writing immediately, but in no event later than seven days from delivery. If a complaint about defects is not made, or is made after a delay, the Buyer may not base any claim on such defects.

2. If acceptance procedures are agreed, such acceptance may only be carried out at our storage depot or delivering works; it must be carried out at the latest immediately after notification of readiness for dispatch. All costs associated with acceptance or charged to us in this connection by third parties shall be borne by the Buyer. In the event that special regulations on quality apply, the Buyer shall be obliged to perform acceptance procedures on the goods at our request. If acceptance is not carried out, or is carried out late or incompletely, we shall be entitled to dispatch the goods without acceptance, or to store the goods at the expense and risk of the Buyer. The goods are deemed to be delivered in accordance with the contract once they have been dispatched or placed in storage. After the Buyer has accepted the goods in the manner agreed, no complaints of defects shall be accepted that were identifiable in the agreed type of acceptance procedure. If a defect was not identified by the Buyer on account of negligence, he may not assert any rights in respect of such defect unless we maliciously withheld such information or provided a warranty.

3. If the Buyer has not been requested by us, pursuant to the first sentence of clause 1, to conduct acceptance procedures and if no acceptance procedure according to clause 2 has been agreed, then the Buyer is under an obligation to examine the goods immediately on delivery. Any defects identified on delivery must be notified to us at once. Obvious defects must be notified within eight days after delivery (dispatch suffices). Defects that were not identifiable even in a proper examination of the object of sale must be notified to us without delay (dispatch suffices) as soon as they become evident in the normal course of business. The Buyer may not base a claim on defects that were not notified in a timely manner.

4. In the case of goods that were sold as sub-quality goods, the Buyer has no warranty rights in respect of the specified grounds for lowered quality and in respect of such defects as could normally be expected in such cases. We shall not accept any liability for defects in goods sold as Class Ia goods.

5. The Buyer shall provide us, on request and without delay, with samples of the material to which objections have been raised.

6. Before goods that are the subject of a complaint can be further processed or resold, we must be given an opportunity to examine the complaint.

7. In the case of justified and timely complaint about defects, the Buyer shall have the statutory rights in relation to the defective goods, but subject to the following proviso:

a) If the goods are defective, the Buyer's claims shall be restricted initially to performance of the contract. This provision shall not apply if it is unreasonable for the Buyer to accept such performance of the contract.

We may choose at our discretion between rectification of the defect or subsequent delivery. If efforts at performance of the contract fail twice, or are refused by us, the Buyer may reduce the purchase price or withdraw from the contract.

b) The Buyer does not have this right of withdrawal if the defect is minor.

c) Section VII below shall apply to compensation claims.

d) We shall bear any expenses incurred in remedying defects only to the extent that they are of reasonable amount in the specific case, particularly in relation to the purchase price of the goods. We shall not bear any expenses that are incurred because the goods were brought to a different location than the agreed place of performance, unless such transfer accords with their contractual usage.

e) If several goods were sold and only single goods are defective, or if only single parts of one sold good are defective, any right of the Customer to withdraw from the contract shall be confined to the defective goods or the defective part of a good. This principle shall not apply if the defective goods or the defective part of a good cannot be separated from the other goods

or parts without causing damage to, or reducing the functionality of the good or goods, or if such separation would be unacceptable for the Buyer. The Buyer must explain the reasons for such unacceptability.

**VII. Limitations on liability, exclusion of withdrawal**

1. Unless otherwise specified below, any additional or more extensive claims by the Buyer against us are excluded. This shall apply in particular to claims for damages for a breach of duties arising from the obligation or from unlawful acts. We are therefore not liable for any damage not deriving from the delivered goods themselves. We are in particular not liable for any loss of profit or other financial losses by the Buyer.

2. The limitations of liability indicated above do not apply in the case of specific intent, gross negligence on the part of our legal representatives or senior employees, and in the event of culpable violation of significant contractual obligations. In the event of culpable violation of significant contractual obligations we are liable - other than in cases of specific intent or gross negligence on the part of our legal representatives or senior employees - only for standard contractual loss, or loss which might reasonably have been expected.

3. The limitation of liability is also not applicable in those cases where there is liability in accordance with product liability laws in the case of defects in goods supplied for private use. It is also not applicable in case of injury of life, body or health and in the absence of guaranteed characteristics, if, and insofar as the object of the guarantee was to cover the partner against any losses not deriving from the goods supplied themselves.

4. Insofar as our liability is excluded or limited, this is also applicable to the personal liability of our employees, workers, personnel, legal representatives and vicarious agents.

5. The legal provisions relating to burden of proof are not affected by this.

**VIII. Retention of title**

1. The goods shall remain our exclusive property until all our claims against the Buyer arising for whatever legal reason now or in the future (including all current account debit balances) have been settled in full.

2. Any processing or transformation of our goods by the Buyer is always on our behalf as manufacturer, as defined in the Section 950 of the German Civil Code. If our goods are processed, transformed or inseparably combined or mixed with other items that are not our property, we acquire co-ownership of the new object in proportion to the value of our goods and the value of the other processed object at the time of such processing, transformation, mixing or combination. If the other object is to be deemed the primary object, it is hereby agreed that the Buyer shall transfer proportionate co-ownership to us. We hereby accept said transfer of proportionate ownership. The Buyer shall keep our (co-) ownership on our behalf at no charge. The product that results from processing is governed by the same provisions and conditions as the goods we supplied with retention of title.

3. The Buyer has the right to process and to sell the goods sold to him under retention of title in the ordinary course of business as long as he does not default on his payments to us. Resale is equal in status to integration in land and soil or in facilities associated with buildings or use in fulfilling other contracts for services or deliveries. The right to process and resell the goods shall also be null and void if his financial situation deteriorates significantly. The reserved title goods may not be pledged, or ownership of them transferred as a form of security. The Buyer hereby assigns to us by way of security all claims it may acquire from resale of the goods (including all current account debit balances), as well as any insurance claims and claims against third parties due to damage, destruction, theft or loss of the goods. We hereby accept this assignment of claims. If we are entitled only to co-ownership of the reserved title goods, anticipatory assignment shall be confined to that part of the claim corresponding to our share in co-ownership (based on the invoice value). When reselling the goods, the Buyer must retain ownership of the reserved title goods until his customers have paid the purchase price in full. The Buyer shall not be entitled to resell the goods to third parties if assignment of the purchase price claim accruing from resale is prohibited.

4. We authorize the Buyer, subject to revocation, to collect the claims assigned to us to his own account and in his own name. This authorization to collect may be revoked if the Buyer fails to meet properly his obligations to render payment to us, or if our claims to payment seem jeopardized by the Buyer's deteriorating financial status. When the proceeds of sale have been credited to the Buyer, our claim to payment shall be due immediately, and must be paid by immediate bank transfer without deductions of any kind. The Buyer shall inform us, on request, of the debtors owing the

assigned claims. It is not permitted to assign the claim accruing from resale unless such assignment is made as part of a genuine factoring transaction that shall be notified to us and in which the proceeds from factoring are at least equal to the value of our secured claim. The Buyer shall be obliged to disclose the assignment to the factor and to draw attention to our ownership. The factoring proceeds must be credited to one of our accounts to the amount of our secured claim. The Buyer hereby assigns to us his claim to payment from the factor to the amount of receivables to be secured. We hereby accept this assignment of claims.

5. The right of the Buyer to hold possession of the reserved title goods shall become extinct if he fails to honor his obligations under this or other contracts. In such an event, we shall have the right to enter the premises of the Buyer without granting an extension of term or declaring our withdrawal, to take possession of the reserved title goods ourselves and to liquidate said goods as best possible by private sale or by auction, without prejudice to the Buyer's payment and other obligations towards us. After deduction of expenses, the proceeds shall be credited to the Buyer against the amounts he owes. Any surplus amount shall be paid out to the Buyer.

6. If third parties seize or confiscate the reserved title goods, the Buyer shall draw attention to our ownership and notify us accordingly without delay. Our expenses for intervening shall be borne by the Buyer, to whom we shall assign any claim to reimbursement that we may acquire against the third party concurrently with payment of the intervention expenses.

7. The Buyer shall be under an obligation to insure the reserved title goods against common risks such as theft, fire and water damage at his own expense, to an adequate extent and for the real value of the goods, and to store the goods in such a manner that our property is not put at risk. In case an insurance claim becomes payable, the Buyer hereby assigns to us in advance his claims against the insurance company. We hereby accept this assignment of claims.

If the Buyer fails to honor the obligation pursuant to the first sentence of clause 7 No. 1 above, he shall be obliged to pay a contractual penalty of Euro 10,000.00.

8. The Buyer has the right to require us to release claims to the extent that the value of our security exceeds our securable claims by more than 10%. We shall select at our own discretion the claims to be released.

9. If the law of the country in which the goods are delivered or in which the goods are located do not permit a retention of ownership pursuant to the above provisions, but said laws permit the Buyer to retain similar rights in rem to the object of delivery in order to secure his claims, or to have such rights granted to him, then such rights shall be deemed on conclusion of contract as having been retained on our behalf and granted to us by the Buyer. The Buyer agrees to collaborate in all measures that we wish to take in order to protect our ownership rights or other rights to the reserved titled goods in place of those ownership rights. In the case of exported goods, we may also require that the Buyer provides us with banker's guarantees as security for all our claims under the contract.

#### **IX. Periods of limitation**

1. The period of limitation for claims asserted by the Customer on account of defective goods is one year. Claims based on a defect in an object that has been used for building construction in accordance with the normal use of such object, and which has caused the defectiveness of such a building shall be barred by limitation after five years. Claims asserted by the Customer on account of a defect in the object of sale, and which consist in a third party's rights in rem, on the basis of which the surrender of the object of sale may be demanded, or in some other title that may be registered against real property, shall be barred by limitation after ten years.

2. Other contractual claims by the Buyer on account of breaches of obligation shall be barred by limitation after one year. This shall not apply to the Buyer's right to withdraw from the contract on account of a breach of obligation that does not consist in a defect in the goods.

3. Claims arising from a warranty shall similarly be barred by limitation after one year.

4. In deviation from clauses X. 1-3 above, the statutory periods of limitation shall apply to the following claims on the part of the Customer:

a) Claims to damages based on product liability, on account of personal injury to life, body or health, or due to breaches of a substantial contractual obligation, and on account of other damage resulting from a deliberate or grossly negligent breach of obligations by ourselves or persons we engage in performing our obligations,

b) Claims to reimbursement of expenses pursuant to Section 478 (2)BGB and

c) Claims due to malicious non-disclosure of a defect.

5. Our claims against the Buyer shall be barred by limitation in accordance with statutory regulations.

#### **X. Applicable law, place of performance, place of jurisdiction**

1. The Contract is governed exclusively by the law of Germany under exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

2. The place of performance, also for payments by the Buyer, is Waghäusel, Germany.

3. If the Buyer has merchant status (is a *Kaufmann*), the sole place of jurisdiction for both parties and for all disputes arising directly or indirectly from the contract is Waghäusel, Germany. However, we have the right to institute judicial action against the Buyer at the latter's general place of jurisdiction.

4. In the case of cross-border deliveries, the exclusive place of jurisdiction for all disputes arising from the contractual relationship is also Waghäusel, Germany. We reserve the right to invoke any other court that has jurisdiction under the Jurisdiction of Courts and the Enforcement of Judgements (European Communities) Act of 27 September 1968, or under EU Regulation 44/2001.

#### **XI. Severability clause**

1. If any condition of this Contract is or becomes invalid or unenforceable, this shall not affect the validity or enforceability of the remaining conditions of this Contract.

2. In the case mentioned in XI. sec.1 the Parties shall replace the invalid or unenforceable provisions by such provisions that most closely correspond to the economic purpose of the provisions to be replaced.

#### **XII. Data protection**

The Buyer acknowledges that, on account of this contract, we store his personal data for the purposes of automated processing (invoicing, bookkeeping, etc.). No other personal data besides those contained in this contract shall be stored.

FLABOFORM GmbH