

1 INTRODUCTION

- 1.1 These Conditions apply to all contracts for the sale of goods or services by Scapa Deutschland GmbH, Markkircher Strasse 12a, D-68229 Mannheim ("Seller") exclusively. Differing or contrary terms shall not apply except if expressly agreed upon in writing. These terms and conditions of sale shall also govern all future transactions between the parties and shall also apply if we perform delivery despite our knowledge of differing or contrary terms.
- 1.2 Individual agreements with the Purchaser (including collateral agreements, supplements and amendments) shall always take precedence over these Conditions. For the contents of such agreements, a written contract or our written confirmation shall be decisive.

2 CONTRACTS

- 2.1 Each contract for the sale of Goods by the Seller is subject to these Conditions. "Goods" means those goods including any raw materials, component parts and finished products which the Seller supplies to the Purchaser in accordance with these Conditions as further specified in this or any relevant purchase order or any amendment thereto duly signed by the Purchaser and the Seller.
- 2.2 Our offers are non-binding. The Purchaser shall provide the Seller with an order for each delivery of Goods required ("Order"). The Order shall stipulate the type and quantity of Goods required, the delivery address, details of technical requirements of the Purchaser ("Purchaser's Specification"), if any, and any other information required by the Seller from time to time.
- 2.3 Insofar as the Order constitutes an offer (*Angebot*) within the meaning of § 145 BGB (German Civil Code) we are entitled to accept the offer within two weeks.
- 2.4 The acceptance can be made in writing (e.g. by an order confirmation) or by delivering the Goods to the Purchaser, thereby concluding the contract ("Contract").
- 2.5 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing.

3 SUPPLY OF GOODS

- 3.1 The Goods are described in the Seller's specification of technical requirements and/or description ("Specification").
- 3.2 If the Seller agrees that the Goods are to be manufactured in accordance with the Purchaser's Specification, the Seller shall use reasonable endeavours to comply with the Purchaser's specification, but the Seller accepts no liability for the appropriateness or fitness for purpose of the Purchaser's Specification. The Purchaser's Specification shall be viewed as a guide only.
- 3.3 The Seller reserves the right in its sole discretion to make any changes in Specification of the Goods which are required to conform with all and any applicable safety or other requirements or which do not materially affect their quality or performance.

4 PRICE AND PAYMENT

- 4.1 The price of the Goods shall be the price set out in the Contract or, if not specified, the price quoted by the Seller or, if not specified and no price has been quoted, the price listed in the Seller's published price list current at the date of the Contract.
- 4.2 The Seller may increase the price of Goods with prior notice to the Purchaser in the event of any increases in payable taxes.
- 4.3 The terms of payment specified in the Contract are to be strictly and punctually adhered to.
- 4.4 Unless otherwise stated in the Contract or under the terms of any quotation or in any price list of the Seller, all prices are quoted by the Seller on an ex-works basis and the Purchaser shall be liable for the cost of carriage, packaging and insurance in full together with any additional expenses, licence fees or duties paid or incurred by the Seller as a result of the delivery of the Goods. If no terms relating to the carriage charges to be charged to the Purchaser are stated in the Contract, such carriage charges will be invoiced to the Purchaser at the Seller's prevailing rate at the time of dispatch.
- 4.5 The price is exclusive of any applicable value added tax, which the Purchaser shall be additionally liable to pay the Seller.
- 4.6 The Purchaser shall make payment to the Seller in respect of all invoices in full at such time and in such currency as referred to in the Contract. If the Contract lacks such specification, the purchase price is due and payable net within 14 days from the date of delivery.
- 4.7 From the due date default interest in the amount of 8% above the respective base interest rate (*Basiszinssatz*) p.a. shall

accrue. We reserve all rights to claim further damages for delay.

- 4.8 If it becomes apparent after conclusion of the Contract that our claim is at risk due to lack of capacity (*mangelnde Leistungsfähigkeit*) of the Purchaser (e.g. application for commencement of insolvency proceedings), we are, according to the statutory provisions concerning retention of performance (*Leistungsverweigerung*) entitled to withdraw from the Contract (possibly after setting a deadline, § 321 BGB). In case of a contract for the production of custom made things (*unvertretbare Sache*), we can declare withdrawal (*Rücktritt*) immediately; the statutory provisions concerning the waiver of the deadline (*Entbehrlichkeit der Fristsetzung*) remain unaffected.
- 4.9 The Purchaser shall be entitled to offset only insofar as the Purchaser's counterclaim is acknowledged, undisputed or assessed in a legally binding judgement. The Purchaser is entitled to claim retainer rights only to the extent such rights are based on the same transaction.

5 DELIVERY

- 5.1 Delivery shall be ex-works unless stated otherwise on the order acknowledgement and/or invoice.
- 5.2 Delivery is conditional upon timely and proper performance of all duties of the Purchaser. Defences based on non-performance of the Contract are reserved.
- 5.3 The delivery period is agreed upon individually or specified by us in accepting the order.
- 5.4 If we cannot comply with binding delivery dates for reasons that we are not responsible for (*nicht zu vertreten haben*), we will inform the Purchaser of this immediately and simultaneously inform about the expected new delivery date. If the performance is not even possible within the new delivery period, we are entitled to withdraw (*zurücktreten*) from all or part of the Contract. Payments made by the Purchaser will be refunded immediately.
- 5.5 In case of default in acceptance (*Annahmeverzug*) or other breach of duties to cooperate by the Purchaser we are entitled to claim any resulting damage including but not limited to additional expenses, if any. Further damages are reserved. In this case, the risk of loss or damage to the goods passes to the Purchaser at the time of such default or breach of duty to cooperate.
- 5.6 The Seller shall be entitled to deliver the Goods in instalments if this is reasonable (*zumutbar*) for the Purchaser. Failure to make one delivery shall not vitiate the Contract as to other subsequent deliveries.
- 5.7 Goods delivered to the Purchaser which are in accordance with the Contract may at the Seller's sole discretion be accepted for return to the Seller if the Seller is notified of the proposed return within 30 days of the Goods being delivered. In that event, the Purchaser shall be liable to pay 50% of the invoice price plus the applicable VAT, packaging costs, restocking charges and the costs of carriage to the Purchaser (if any). The costs of returning the Goods to the Seller shall be borne by the Purchaser.

6 WARRANTY

- 6.1 For the rights of the Purchaser in case of material defects and defects of title (including wrong and short delivery and improper installation or faulty assembly instructions), the statutory provisions shall apply, unless otherwise specified in the following. In all cases the special statutory provisions for final delivery of goods to a consumer (supplier recourse (*Lieferantenregress*) pursuant to §§ 478, 479 German Civil Code) remain unaffected.
- 6.2 Basis of our liability for defects is primarily our agreement about the quality (*Vereinbarung über die Beschaffenheit*) of the Goods. Descriptions of the Goods that are designated as such (including the manufacturer's descriptions) and that are submitted to the Purchaser or otherwise incorporated in the Contract shall be deemed such an agreement.
- 6.3 If there was no explicit agreement on the quality the statutory provisions shall apply. We assume no liability for public statements made by any manufacturer or other third parties (eg advertising statements).
- 6.4 Precondition for any warranty claim of the Purchaser is the Purchaser's full compliance with all requirements regarding inspection and objection established by § 377 HGB (German Commercial Code).
- 6.5 If the delivered Goods are defective, the Purchaser may require, as subsequent performance (*Nacherfüllung*) at its option, removal of the defect (rectification) or delivery of Goods free from defects (replacement, (*Ersatzlieferung*)). If the Purchaser does not explain as to which of the two rights he chooses, we may set a reasonable deadline. If the Purchaser remains silent, the right to choose shall be with us.

- 6.6 We are entitled to make subsequent performance owed conditional on Purchaser paying the purchase price due. The Purchaser however is entitled to withhold an appropriate part of the purchase price relating to the value of the defect.
- 6.7 Claims of the Purchaser for damages or reimbursement of expenses shall be subject to Sec. 9 and are otherwise excluded.
- 7 OWNERSHIP AND RISK**
- 7.1 If the Purchaser demands shipment of the Goods the risk of loss or damage to the Goods passes to the Purchaser upon dispatch.
- 7.2 Unless stated to the contrary, insurance of such Goods shall be the responsibility of the Purchaser as from the date risk passes to the Purchaser.
- 8 RETENTION OF TITLE**
- 8.1 We retain title to the Goods until receipt of all payments in full. In case of breach of contract by the Purchaser including, without limitation, default in payment, we are entitled to take possession of the Goods.
- 8.2 Until such time as title in the Goods passes to the Purchaser:
- 8.2.1 the Purchaser shall hold the Goods as the Seller's fiduciary agent and shall keep the Goods separate from those of the Purchaser and third parties and shall keep the Goods properly stored, protected, insured and identified as the Seller's property; and
- 8.2.2 the Purchaser shall be entitled to resell the Goods in the ordinary course of its business at full market value but shall account to the Seller for the proceeds of sale or otherwise of the Goods including insurance proceeds and shall keep all such proceeds separate from any monies or property of the Purchaser and third parties.
- 8.3 As long as the purchase price has not been completely paid, the Purchaser shall immediately inform us in writing if the Goods become subject to rights of third persons or other encumbrances.
- 8.4 The Purchaser may resell the Goods subject to the above retention of title only in the course of its regular business. For this case, the Purchaser hereby assigns all claims arising out of such resale, whether the Goods have been processed or not, to us (Securities). Notwithstanding our right to claim direct payment the Purchaser shall be entitled to receive the payment on the assigned claims. To this end, we agree to not demand payment on the assigned claims to the extent the Purchaser complies with all its obligations for payment and does not become subject to an application for insolvency or similar proceedings or to any stay of payments.
- 8.5 Insofar as the above Securities exceed the secured claim by more than 10%, we are obligated, upon our election, to release such securities upon the Purchaser's request.
- 9 LIABILITY**
- 9.1 Where damages of the Purchaser have been caused by the Seller or its representatives with intent or gross negligence (*grobe Fahrlässigkeit*), the statutory provisions shall apply. The same applies for damages from injury to life, body or health due to Seller's or its representative's negligent breach of duty.
- 9.2 For damages to property (*Sachschäden*) or financial damages (*Vermögensschäden*) caused negligently by Seller or its representatives (outside the scope of 9.1), Seller shall only be liable in case of a breach of an essential contractual obligation (*wesentliche Vertragspflicht*), but limited to the foreseeable damage that is typical for these kinds of contracts, and in the event of default to 5% of the value of the order.
- 9.3 In any event, liability rules of the German Product Liability Act (*Produkthaftungsgesetz*) shall remain unaffected.
- 9.4 To the extent that the Seller is liable only in the amount of typically foreseeable damage pursuant to section 9.2, it shall not be liable for indirect damage, consequential damage caused by a defect, or lost profit.
- 9.5 The liability of the Seller – independent of the legal grounds – shall be excluded in cases other than those specified above.
- 9.6 Exclusion of the liability of the Seller shall also apply to the personal liability of salary earners, workers, employees, representatives, and agents of the Seller.
- 10 STATUTE OF LIMITATIONS**
- 10.1 Notwithstanding § 438 para 1 No. 3 BGB, the general limitation period for claims arising from material defects and defects in title shall be one year from delivery.
- 10.2 However, where the Goods are a thing that has been used in its intended use for a building and caused defects (building materials), the limitation period shall be, in accordance with the statutory provisions, 5 years from delivery (§ 438 para. 1 No. 2 BGB). §§ 438 para. 1 no. 1 BGB, 438 para. 3 BGB and 479 BGB shall remain unaffected as well.
- 11 INSTRUCTIONS AND HEALTH AND SAFETY**

The Purchaser shall comply (and ensure that its employees and agents comply) strictly with all instructions, warnings, data sheets and other material (including without limitation those regarding health and safety) supplied by the Seller with, or in connection with, the Goods and shall, when supplying the Goods, ensure that they are accompanied by the same.

12 ASSIGNMENT

- 12.1 The Purchaser shall not be entitled to assign the Contract or any part of it without the prior written consent of the Seller.
- 12.2 The Seller may assign the Contract or any part of it to any person, firm or company.

13 GENERAL

- 13.1 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 13.2 Any waiver by the Seller of any breach of, or any default under, any provision of the Contract by the Purchaser will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 13.3 The Contract shall be governed by the Laws of the Federal Republic of Germany with the exclusion of the CISG. Exclusive place of jurisdiction shall be Mannheim. The Seller however shall also be entitled to file a lawsuit at the Purchaser's seat.
- 13.4 All confidential information relating to the Seller's business and processes which may come or have come into the possession of the Purchaser in connection with the Contract shall be kept secret and confidential by the Purchaser and shall not be disclosed to any third party without the prior written consent of the Seller.
- 13.5 Nothing in these Terms and Conditions, where express or implied, shall be deemed to confer any rights on the Purchaser to apply any trade mark, service mark, patent, design or other intellectual property rights owned or licensed by the Seller or any of the Seller's associated companies to any Goods.
- 14 COMMUNICATIONS**
- Relevant statements and notifications that are submitted by the Purchaser after conclusion of the Contract (e.g. the setting of deadlines, notifications of defects, notices of withdrawal (Rücktritt) or reduction) need to be in writing.

Status as of May 2013