

## **1 General**

- 1.1 Our conditions of sale apply exclusively; we do not accept conditions of sale which conflict with these, or customer's general business conditions which deviate from these, unless we have explicitly agreed to their validity in writing. Our conditions of sale apply even if we make deliveries without reservation and are aware of customer conditions which conflict with or deviate from our conditions of sale.
- 1.2 Our conditions of sale apply to a person as defined under section 3 of the Interpretation and General Clauses Ordinance (Chapter 1, the Laws of Hong Kong).
- 1.3 Our conditions of sale also apply to all future transactions with the customer.
- 1.4 If we also take on assembly work, then to this extent our special conditions for assembly work will apply.

## **2 Quotations and Quotation Documentation**

- 2.1 Our quotation is non-binding until a definitive order confirmation has been issued by us.
- 2.2 The purchase order from the customer is a binding offer. We are entitled to accept this offer within two weeks by sending an order confirmation or by sending the ordered goods to the customer within this period.
- 2.3 The technical data in our catalogues, lists and drawings (including weight and dimensional details) are carefully compiled; errors excepted. The same applies to all data in our sales documentation. Such data, however, do not represent any warranties; in every case, warranty promises require an express confirmation by us.
- 2.4 We reserve the right to make any changes to the products delivered by us in the interest of technical progress even after the order confirmation.

## **3 Prices and payment conditions**

- 3.1 Unless stated otherwise in the order confirmation, our prices are exworks including loading at the factory, but excluding packaging, freight, transfer, insurance, customs duty, assembly and any legally applicable sales tax.
- 3.2 For belts and tapes delivered pre-tensioned, the geometric operating length serves as a basis for invoicing.
- 3.3 We reserve the right to increase our prices correspondingly 4 months after the conclusion of the contract, if cost increases are incurred after such date, particularly due to collective bargaining agreements or price increases in raw materials. We shall prove such increases to the customer on demand.
- 3.4 Unless otherwise specified in the order confirmation, the purchasing price is due immediately without any deductions made. Any discounts require special agreement in writing.
- 3.5 Unless other payment dates have been agreed, payments will be considered late 30 days after invoicing. Late payment interest will be calculated at 8 percentage points per annum above the base interest rate of the European Central Bank. The assertion of further claims for damages is not excluded hereby. We are not obligated to make any further deliveries under any running contract with the customer until payment of any invoiced amount due, including late payment interest thereon has been received in full.

- 3.6 Bills of exchange and cheques will only be accepted by special agreement and only for purposes of payment; any costs of discounting and collection shall be borne by the customer. In case of acceptance of bills of exchange, we shall be entitled to give these back if discounting thereof is refused by the state central bank.
- 3.7 The customer has the right to offset payments only if his counterclaims are legally ascertained, undisputed, or accepted by us. Furthermore, the customer is entitled to exercise a right to withhold payment only to the extent to which his counterclaims are based on the same contractual relationship. The customer does not have a right to withhold payments due to partial performance under the applicable laws in Hong Kong.
- 3.8 If after the acceptance of an order, facts become known to us which give rise to doubts as to the customer's ability to pay, we are entitled to demand full payment or the provision of corresponding securities prior to delivery; alternatively, we have the right to rescind the contract if a payment deadline set by us has not been respected. In addition to delays in payment which have already occurred, information given by a bank, a credit-reference agency, another company with a business relationship with the customer or similar and corresponding to the care taken by a respectable business person, will count as proof of an essential deterioration in assets.

If delivery has already been made, then the invoice amounts in question will become due for payment in full immediately, irrespective of any payment conditions agreed otherwise.

#### **4 Delivery Dates and Delays of Delivery**

- 4.1 Unless expressly agreed otherwise, all delivery dates are to be considered as non-binding.
- 4.2 All delivery periods shall begin on the date of the order confirmation, but not prior to the timely and proper fulfillment of the obligations of the customer, particularly not prior to the furnishing of the documentation, approvals or clearances to be provided by the customer and also not prior to receipt of any agreed down-payment.
- 4.3 The delivery period shall be deemed to have been adhered to if the merchandise has left the factory or the shipment warehouse on or prior to the expiry of such period or notification of readiness for shipment of such merchandise has been given to the customer. The foregoing does not apply if inspection and approval is contractually stipulated or if an obligation for assembly has been agreed.
- 4.4 In the event of acts of God or other unforeseeable extraordinary events beyond our control, such as e.g. plant malfunction, strikes, lock-outs, interventions by the authorities, interruptions of power supply, late or incorrect delivery of raw materials, semi-finished parts or finished products needed for the manufacture of the merchandise to be supplied, the delivery period will be extended by the duration of such obstruction and a suitable lead time if we are prevented thereby from performing our obligations at the proper time. The foregoing also applies if the aforementioned events occur at any sub-suppliers. In important cases, the customer will be informed by us soon as possible of the beginning and the end of such events.

If due to any of the above-named events the delivery or service becomes impossible or unreasonable, we shall be released from the obligation to supply. If the delivery period is extended or if we are released from the obligation to supply, the customer shall not have any claims for damages as a result hereof. To the extent we are released from the obligation to supply, we shall reimburse any initial payments made by the customer.

- 4.5 The statutory right of the customer to rescind the contract remains unaffected, provided that we are responsible for the delay. The customer is obligated, on demand from us, to declare within an appropriate period whether, after the expiry of such period, he will rescind the contract due to the delay in the delivery and/or seek damages instead of the delivery or compensation for expenditures incurred, or whether he will be insisting on delivery as agreed.
- 4.6 If delivery is delayed at the request of the customer, we shall charge the warehousing costs incurred – beginning one month after notification of readiness for delivery. Upon the expiry of an appropriate period set by us, and following reasonable advance notice, we are entitled to dispose of the

merchandise in any other way and/or to deliver the merchandise to the customer with a suitably extended delivery period.

## **5 Delivery, Passing of Risk, Shipment**

- 5.1 Partial shipments are permissible to the extent this is reasonable.
- 5.2 All risks shall pass to the customer when the shipment has been handed over to a forwarding company or a carrier, at the latest, however, upon leaving the factory or the warehouse. This also applies if a "carriage paid" delivery is agreed. Shipment is made on behalf of the customer.
- 5.3 If shipment is delayed by circumstances which can be attributed to the customer, then all risks are transferred to the customer upon notification of readiness for shipment. At the request and expense of the customer, we shall arrange for any insurance coverage requested by the customer.
- 5.4 At the request of the customer, shipments will be insured by us, at the cost of the customer, against theft or breakage, and also against transport fire or water damage, and against other insurable risks. The timing of the passing of risk pursuant to Clause 5.2 remains unaffected.

## **6 Retention of Title**

- 6.1 We reserve title to the goods delivered until we have received full payments for such goods. We also reserve the right to title of the goods delivered until all payments arising from our business relationship with the customer have been met. Should the customer be in breach of contract, in particular due to defaults on payment, deterioration in his financial position, or the instigation of insolvency proceedings etc., we are entitled to repossess the goods delivered (and not yet paid for in full). Such stipulation also applies should the goods delivered have been paid for, but where payments from the business relationship as a whole are still outstanding. The repossession or assertion of retention of title does not require us to withdraw from the contract. Such actions or seizure of the goods delivered by us does not constitute any withdrawal from the contract unless we have explicitly declared as such in writing. We are authorised to sell the delivered goods once repossessed. Revenues arising from the sale of the goods are to be offset against the customer's liabilities minus appropriate admin costs therefor.
- 6.2 The customer is obligated to inform us in writing and without undue delay about any garnishments or other interferences by third parties so that we can institute proceedings pursuant to the applicable laws in Hong Kong. Insofar as such third party is not in a position to reimburse us for the court and out-of-court costs for such proceedings, the customer accepts liability for the loss incurred by us.
- 6.3 Should seizures or other interventions by third parties occur, the customer must inform us immediately in writing thereof (by e-mail or fax), so that we can take legal action pursuant to the applicable laws in Hong Kong. Should the third party not be able to reimburse us for the court fees and out-of-court costs of an action, the customer will be liable for the relevant losses we have incurred.
- 6.4 The customer is entitled to sell on the goods delivered in the ordinary course of business; such entitlement can be revoked at any time, in particular (but not exclusively) should the customer's financial position deteriorate or should the customer default on payment. The customer already assigns to us all receivables accrued by and owing to him from his customers or third parties amounting to the invoice total (including VAT) regardless of whether the goods delivered have been sold on with or without having been processed. The customer is authorised to recover such liabilities even after the assignment thereof without prejudice to our entitlement to recover the liabilities ourselves. However, we undertake not to recover payment as long as the customer complies with his payment obligations arising from the revenues received, does not default on payment and in particular does not instigate insolvency proceedings or cease making payments. Should the obligation not to recover payments be dropped, we can demand the customer notifies us of the assigned payments and the relevant debtors, provides all details required to recover such payments, hands over all relevant documents and informs the debtors of the assignment of such payments.

- 6.5 Should the goods subject to retention of title be combined with other items that do not belong to us so that they form one single item, we will acquire co-ownership to the single item in the same ratio as the value of the goods subject to retention of title (grand total of the invoice including VAT) to the other items at the juncture at which they were combined. If the goods subject to retention of title are combined with other items, so that the customer's item is to be deemed the principal item, the customer already assigns proportionate co-ownership to us of such item. We accept such assignment. The provisions in this point 6.5 apply accordingly if the goods subject to retention of title are combined or processed with other items.

## **7 Material and legal defects**

- 7.1 We supply our products and services with the due care customary in the industry in accordance with the technical specifications documented and applicable at the time and in line with recognised technical practice. The customer is responsible for checking any other legal, official, or technical requirements relating to the specific application and must inform us in detail of such.
- 7.2 Where one of our products shows a defect in material or workmanship or a defect in title (hereinafter: a "Defect") within the limitation period whose cause was already present at the time of the passing of risk, the customer shall be entitled to a repair or re-delivery of such product, at our discretion. We shall only bear the expenses necessary for such repair or replacement, such as e.g. wages, material, transport and travelling costs, to the extent that such expenses are not increased as a result of a product having subsequently been removed to a location other than the headquarters of the customer, unless such removal is in accordance with the intended use of such product. Replaced parts shall be our property and are to be returned to us.
- 7.3 Should our efforts to repair a defective product fail, the customer shall be entitled, at his sole option, – irrespective of any claims for damages and reimbursement of expenses pursuant to Clause 8 – either to a reduction of the purchase price or – where our breach is material – to a rescission of the contract.
- 7.4 Any liability for Defects shall require that
- a) none of the following circumstances prevail: Dimensional deviations and manufacturing tolerances, within specifications, data sheets etc., normal ageing, wear and tear, in particular those which are described in the respective technical data sheets, unsuitable or improper use, faulty assembly or commissioning by the customer or third parties, normal wear, faulty or careless treatment, unsuitable operating materials, replacement materials, defective construction work, chemical, electrochemical or electrical effects.
  - b) the customer has properly complied with his statutory obligations with regard to investigation and reporting of complaints. Defects must be notified to us, specifying the type and extent thereof within 10 days after receipt of the delivered product at the specified destination or if such defects were not evident upon proper inspection, to substantiate these in detail and in writing (by e-mail or fax) within 10 days after the discovery of such defects.
  - c) the customer – taking into account an appropriate withholding amount in accordance with Item 7.8, – is not in arrears with his payments.
- 7.5 The customer, upon consultation with us, has to allow for the time and opportunity required to undertake all repairs and replacement deliveries which appear necessary in our reasonable discretion. Otherwise, we shall not be liable for any damages arising as a result of the customer not allowing us the time and opportunity to undertake the necessary repair measures or replacement deliveries, as the case may be.
- 7.6 To the maximum extent permitted by the applicable laws in Hong Kong, claims for Defects shall be subject to a limitation period of 12 months after shipment or notification of readiness for shipment, as the case may be. The foregoing does not apply where a Defect is caused by intentional behaviour attributable to us. We accept liability for replacement items or repairs up until the expiry of the limitation period applicable to the product originally delivered.

- 7.7 The customer shall be entitled to any recourse against us only to the extent that the customer has not entered into any agreements with his customers which go beyond the statutory remedies for Defects. Clause 7.2 sentence 2 shall apply mutatis mutandis to the scope of any such recourse claim. If a recourse claim is brought by the customer on account of a Defect raised by any of his customers with regard to a newly manufactured product, he is obliged to inform us hereof without delay. We reserve the right to satisfy claims brought against the customer by stepping in ourselves. In this case, any satisfaction of the claims of the customer's customer shall be deemed as a satisfaction of the recourse claims of the customer.
- 7.8 In the event of complaints of Defects, the customer shall have the right to retain payments to the extent that they are in a reasonable proportion to the damages incurred by the customer. If a complaint regarding a Defect proves to be unjustified, we shall be entitled to demand reimbursement of the expenses incurred by us from the customer.

## **8 Claims for Damages and Expenses**

- 8.1 We accept liability in accordance with the statutory requirements insofar as the customer asserts claims for damages or reimbursement of expenses (hereinafter: Claims for Damages), which are caused by the intentional misconduct or gross negligence of our agents or auxiliary persons. We also accept liability in accordance with the statutory requirements if we are guilty of breaching an essential obligation under the contract, and also in the event of injury to life, body or health, and to the extent that we have taken on warranty obligations.
- 8.2 Any compensation for damages arising out of a breach of an essential obligation under the contract is limited to the reasonably foreseeable, typically occurring damage, where there is no intentional misconduct or gross negligence and where no liability exists for injury to life, body or health, or under any warranties given by us. Any such Claims for Damages shall be subject to a limitation period of 12 months.
- 8.3 For the rest, liability for damages – irrespective of the legal nature of the claim asserted – is excluded, in particular, we shall not be liable for any damage which has not occurred on the product itself such as e.g. production stoppages, loss of use, or loss of profit.
- 8.4 The mandatory statutory provisions under the applicable Hong Kong laws in relation to product liability remain unaffected.
- 8.4 Claims for reimbursement of expenses by the customer are limited to the interest he has in the fulfillment of the contract.
- 8.5 The foregoing limitations of liability also apply to the personal liability of our employees, representatives, agents and auxiliary persons.

## **9 Technical Application Notes**

- 9.1 Our instructions for use represent only general guidelines. Due to the wide variety of purposes of use of the individual products and due to the special circumstances of each such use, the customer is responsible for carrying out his own trial runs.
- 9.2 Where we provide technical applications support to the customer, the customer shall be solely responsible for the successful operation of his plant and equipment. Any claims by the customer under Clause 8 remain unaffected.

## **10 Place of Performance, Third Party Rights and Applicable Law**

- 10.1 The place of performance for the delivery is customer's place. The place of performance for payments shall be at Hong Kong.
- 10.2 This contract is governed by and shall be construed in accordance with Hong Kong law.

- 10.3 Should any provisions in these general conditions of sale or other contractual agreements be or become completely or partly ineffective, the remaining conditions shall remain unaffected hereby.
- 10.4 A person who is not a party to this agreement has no right under the Contracts (Rights of Third Parties) Ordinance (Chapter 623, the Laws of Hong Kong) to enforce or to enjoy the benefit of any term of this contract. The consent of any person who is not a party to this contract is not required to rescind, vary (including any release or compromise in whole or in part of any liability) or terminate this contract or any clause of this contract at any time.