



Terms and Conditions of Sale and Delivery

of Heimbach GmbH

I.

Scope of Application

The following terms and conditions of Heimbach GmbH (hereinafter referred to as "Seller") shall form a constituent component of any offer and any purchase agreement.

Any and all agreements between the parties concerning performance of the purchase agreement are memorialized in writing in this Agreement. Any conflicting and deviating purchasing terms and conditions of the Purchaser shall not form part of the Agreement, unless the contract parties have expressly agreed thereto in writing in the specific case.

In the event of framework agreements, the Seller's terms and conditions, as amended, shall apply to any and all future legal transactions concerning delivery of the goods. This shall also apply if order confirmations by foreign subsidiaries of the Seller provide that the local law applicable abroad shall apply.

The terms and conditions of sale and delivery apply only to enterprises within the meaning of § 310 of the German Civil Code (BGB).

II.

Purchased Goods

(1) The purchased goods will be determined solely on the basis of the written order confirmation issued by the Seller and the statements made by the Purchaser, provided that specific reference thereto was made in the written order confirmation letter. Any samples will be deemed samples of the model and will therefore not be incorporated by reference into the Agreement. Such an item does not constitute a statement about the qualities of the goods stipulated for delivery. The same

rule applies to any statements made by the Seller regarding the goods stipulated for delivery, where such statements were made before the contract was formed.

- (2) The statements regarding qualities made in the order confirmation or the Agreement do not include any guaranty.
- (3) The statements as to weight that are usual for the relevant goods shall be derived exclusively from the offers and order confirmations. Any production-based deviation in the weight of the delivered goods of up to +/- 5% shall be deemed approved by the Purchaser. Such a deviation shall not entitle the Purchaser to reduce the compensation or to otherwise object, provided that the Seller has not maliciously concealed such deviation or warranted for the weight of the goods.

The weight to be invoiced shall be the weight of the goods under normal atmospheric conditions as set forth in II.4.

- (4) The weight shall be determined following attainment of a balance deriving from the dry side given relative humidity of 65% and a temperature of 20°C. Objections concerning the weight of the delivered goods may be taken into account only to the extent that the deviation exceeds +/- 5% as referred to in II.3.
- (5) The term of the delivered goods shall be contingent upon the respective operating conditions. A warranty as to the term may be given only if mechanical conditions have remained unchanged.



- (6) The Seller shall assume no responsibility for any consequences of incomplete and incorrect measurement information or other technical information provided by the Purchaser. The paper machine clothing (*Bespannungen*) shall be manufactured such that after running in on the machine, the necessary levels are reached for satisfactory performance given standard stress.

III.

Price and Payment Conditions

- (1) For deliveries inside Germany, prices shall apply "ex works", not including packaging. The EXW clause not including packaging (pursuant to Incoterms 2000), as published by the International Chamber of Commerce in Paris, shall apply to prices for international deliveries. This clause shall be included in the contractual relationship and shall apply to the extent that these terms and conditions of sale and delivery do not provide otherwise to the terms and conditions set forth herein.
- (2) The purchase price does not include the statutory value added tax, which will be itemized separately.
- (3) On contracts having an agreed term in excess of four months, the Seller reserves the right to increase or reduce the prices to take into account any cost changes which have occurred specifically as a result of collective bargaining agreements or changes in the price for materials. If the increase is more than 5 % of the agreed price, then the Purchaser has a right to terminate the Agreement.
- (4) The Purchaser shall bear any other taxes, public duties, customs duties or other special costs that are not to be borne by the Seller pursuant to the order confirmation.
- (5) The deduction of cash discounts shall require special written agreement.
- (6) Payments shall be made in compliance with the agreed terms and conditions as set forth in the invoice.
- (7) Unless the order confirmation provides otherwise, the purchase price shall be payable within 30 days immediately upon receipt of the invoice and without any deductions. Should the Purchaser fail to render payment within 30 days of receipt of the invoice, it

shall be in default, unless the contractual performance has failed based on facts and circumstances for which it is not responsible. The purchase price shall accrue interest during the default period at a rate equivalent to 8% above the respective base interest rate. The assertion of additional damage shall not be precluded hereby.

- (8) Set-off with disputed counterclaims or with counterclaims that have not been upheld in a final and binding judgment are not ready for a ruling, and the retention of due and payable invoiced amounts due to disputed counterclaims or counterclaims that have not been upheld in a final and binding judgment shall be excluded, even if objections to defects have been raised.

IV.

Delivery Term

- (1) The deadline shall commence on the date on which the contract is validly entered into, provided the Seller has provided the Purchaser with all information and documentation necessary for technical assessment by the utilization location (*Verwendungsstelle*) and that all other requirements of the purchase agreement are met, e.g. statement of mechanical measurements, the stress levels etc. If the aforementioned criteria have not been met upon receipt of the order, then the delivery deadline shall commence only upon the date on which these preconditions have been met.
- (2) In the case of orders for which no specific delivery deadline is agreed, deliveries shall be rendered and invoiced by no later than the expiry of 6 months from the order date. Orders for goods to be delivered on demand shall be delivered and invoiced by no later than 3 months after the date for request for delivery as agreed in the contract confirmation.
- (3) The delivery deadline shall extend in the event of *force majeure*, lock-out and the occurrence of other unforeseen events extraneous to the will of the Seller and that can be shown to significantly affect completion and delivery of the purchased goods. The same shall apply if such circumstances affect a sub-contractor. Should the hindrance last more than 4 months, both contract parties may rescind the Agreement, provided they properly effect termination within 14 days of expiry of the aforementioned 4 month period.



In event of rescission of the Agreement, compensatory damages for non-performance in place of performance and compensatory damages for late performance shall be excluded. A hindrance for which the Seller is responsible shall not entitle the Seller to rescind the Agreement.

- (4) Should the Seller default in delivery, it shall in any event have a right to a reasonable grace period for delivery to be set by the Purchaser. Such grace period for delivery shall be 4 weeks; in the case of warehouse goods ready for shipment, the grace period shall be one week. The grace period for delivery shall commence on the date on which the notice by the Purchaser relating thereto is received. The grace period for delivery shall be deemed complied with if the Seller ships the goods within the grace period for delivery.
- (5) The Seller shall be liable – to the exclusion of additional claims – for default-based damage attributable to gross fault or willful conduct on the part of itself, its representative or its vicarious agent. Should default in delivery for which the Seller is responsible result from a culpable infringement of a material contractual duty, then the Seller shall also be liable, but only for any foreseeable and typical damage that occurs and provided that the Seller did not act with intent.
- (6) The Seller's liability in the event of a default is limited to 1 % of the delivery value for each week completed up to a maximum amount of 10 % of the entire delivery value.
- (7) Should the Purchaser default in taking acceptance or should it violate other duties of co-operation, the Seller may demand compensation for any damage it incurs to this extent, including any additional expenses. Additional rights shall remain reserved.

Should the elements of the foregoing paragraph have been met, any risk of accidental destruction and accidental deterioration in the purchased goods shall pass to the Purchaser at the time at which it defaulted in taking acceptance or rendering payment.

V. Delivery

- (1) Unless agreed otherwise in writing, place of performance for all deliveries shall be the Seller's plant. Risk shall pass upon transfer of possession of the delivered goods to the first freighter, including where the Seller has assumed responsibility for transport.
- (2) Unless otherwise agreed, the goods shall be packaged in the standard manner. The costs for the packaging are generally charged separately.
- Regarding the packaging, the Purchaser assumes the Seller's responsibility as set forth in the packaging regulation [*Verpackungsverordnung*]. There is generally no right to take back any aids and support material [*Hilfsmittel*].
- (3) Should responsibility for transport be borne by the Seller, the goods shall be delivered as ordinary freight. Additional shipment charges shall be invoiced for special express goods shipments and special deliveries stipulated by the Purchaser.
- (4) Should the Purchaser so desire, the Seller shall arrange transport insurance coverage for the delivery; the Purchaser shall bear any costs incurred in this respect.

VI. Retention of Title

- (1) The Seller shall retain ownership of the delivered goods until full payment of all receivables under the business relationship between the Seller and the Purchaser. The retention of title shall also apply if individual receivables are included in a current account and the balance is drawn and recognized.

In the event of conduct on the part of the Purchaser that violates the Agreement, in particular, in the event of default in payment, the Seller may repossess the delivered goods and the Seller shall be obliged to render up such goods, after the Seller has rescinded the Agreement.



- (2) The Purchaser shall reasonably insure the goods, which are subject to the title retention (secured goods), against all standard risks, in particular, fire, break-in and water risks, and shall handle and store the goods with care.
- (3) The Purchaser shall promptly notify the Seller in writing concerning third party payment execution measures relating to the secured goods and the receivables assigned in advance, and shall provide any documentation necessary for an intervention.
- (4) The Purchaser may resell the delivered goods in the ordinary course of business. The Purchaser may not otherwise dispose over the delivered goods, in particular, pledge them or transfer them by way of security.
- (5) The Purchaser hereby assigns to the Seller any receivables relating to the secured goods deriving from resale or other legal grounds, e.g. insurance or tort, up to an amount equivalent to the purchase price (including Value Added Tax), and the Seller hereby accepts such assignment. Notwithstanding the assignment and the Seller's right to collect such receivables, the Purchaser shall be entitled to collect the receivables as long as it meets its obligations *vis-à-vis* the Seller and the Purchaser's financial situation does not deteriorate. However, should this occur, the Purchaser shall notify the Seller of the assigned receivables and the relevant debtors, provide any necessary information for collection thereof, furnish the Seller with the relevant documentation and notify the debtors of the assignment.
- (6) Should the delivered goods be resold together with other goods that do not belong to the Seller, the Purchaser's receivables against the buyer shall be deemed assigned in an amount equivalent to the delivery price agreed between the Seller and the Purchaser (including Value Added Tax). Should the secured goods be processed by the Purchaser, the Seller shall be deemed the processor within the meaning of § 950 of the Germany Civil Code ("BGB"). Should the secured goods be combined with other goods, the Purchaser shall acquire proportionate co-ownership in the new goods created. Should the Purchaser acquire sole ownership of new goods, then

it shall be deemed agreed that the Purchaser grants the Seller proportionate co-ownership in the new goods.

- (7) The Seller agrees to release at the Purchaser's request the security to which it is entitled to the extent that the realizable value exceeds by more than 20% the receivables to be secured; selection of the security to be released shall be the responsibility of the Seller.

VII.

Liability for Defects and Overall Liability

- (1) If a defect exists, the Seller shall decide in its fair discretion whether it will remedy the defect by making a repair or by supplying a substitute good. When making the aforementioned decision, the Seller shall also take the Purchaser's interest into account.
- (2) The Seller's liability will be based on the statutory provisions, but the claim for compensatory damages will be limited as follows:
- a) For simple negligence [*einfache Fahrlässigkeit*], liability will be limited to injury to life, limb or health.
 - b) For intentional misconduct [*Vorsatz*] on the part of simple vicarious agents and for gross negligence [*grobe Fahrlässigkeit*] on the part of statutory representatives, salaried employees or vicarious agents, liability will be limited to foreseeable and typical damages. Liability will also be limited to the amount of coverage afforded under the business liability insurance [*betriebliche Haftpflichtversicherung*], which the Seller must disclose to the Purchaser at any time upon request.
 - c) For a breach of a so-called "cardinal duty" [*Kardinalpflicht*], the Seller's liability will be limited to those instances described in paragraph b), if there has been simple negligence. A cardinal duty is deemed a duty, the performance of which is absolutely required in order for the agreement to be duly performed and the compliance with which the other contract party should be able to rely upon as a matter of routine.



- (3) The mandatory provisions of the Product Liability Act are not affected thereby. With respect to other breaches of duty – specifically where there has been fault at the time the agreement was formed or there has been tortious conduct - the Seller does not assume any liability beyond that stated above. The statutory representatives, managing employees and basic employees of the Seller will not be liable to an extent greater than the Seller itself.
- (4) The limitation period for rights relating to defects is one year. This also applies to any compensatory claims based on consequential damages resulting from the defects.

The statute of limitations prescribed by law will apply to any liability based on a culpable injury to life, limb or health, on the intentional acts of the Seller's statutory representatives or managing employees and on the provisions of the Product Liability Act and will apply to liability arising from tortious conduct.

- (5) In the event the purchase is based on unidentified goods [*Gattungskauf*], the Seller will not assume any risk about the qualities of the goods and therefore will not be liable in the absence of fault.

VIII.

Arbitration Agreement, Choice of Law

- (1) All disputes that arise in connection with the Agreement shall be subject to a final and binding decision under the arbitration rules of the *Deutsche Institution für Schiedsgerichtsbarkeit e. V.* ("DIS") as amended at the time of the arbitration proceedings. Resort to ordinary courts of law shall be excluded.
- (2) The arbitration proceedings shall be held in Düren.
- (3) The law of the Federal Republic of Germany shall apply exclusively. Application of the uniform UN Sales Convention (United Nations Convention on Contracts for the International Sales of Goods ("CISG")) shall be excluded.
- (4) The language for any arbitration proceedings shall be German.