



### 1. General – Scope

1.1 Our contracts are subject exclusively to the terms and conditions of sale set forth herein; the purchaser's terms and conditions that conflict with or deviate from our terms and conditions of sale are hereby waived unless they have been explicitly agreed upon and confirmed in writing by us. Our terms and conditions of sale shall also apply if we make delivery to the purchaser without reservation despite being aware of contradictory or deviating conditions.

1.2 Any agreements made between the purchaser and us for the purpose of this contract are specified in writing in this contract.

1.3 Our terms and conditions of sale only apply to enterprises pursuant to § 310 clause 1 BGB.

### 2. Quotation – Quotation documents

1. If the purchase order is to be qualified as a quotation pursuant to § 145 BGB, we are free to accept it within 2 weeks of receipt.

2. We reserve the right of ownership and copyright on illustrations, drawings, calculations and other documents. This also applies to written documents which are identified as "confidential". Before passing them on to third parties the purchaser must obtain our express written consent.

### 3. Prices – Terms of payment

1. Unless otherwise provided for in our order confirmation, our prices are quoted "ex works" without packaging, which will be invoiced separately.

2. VAT at legal rate is not included in our prices. It will be shown separately at the legal rate which is applicable on the date of invoicing.

3. Cash discounts are not granted without written agreement. Unless otherwise provided for in our order confirmation, the purchase price is payable as a net amount (without deductions) within 30 days from the invoice date. The consequences of late payment are set by law.

4. During the execution of the purchase order, we will have the right to adjust the price as a result of significant variations of at least +/- 3% suffered by exchange rates, transport costs, insurance, raw materials, labor or any other associated cost.

5. The payment shall be made strictly in accordance with the conditions stated on the order confirmation and we may suspend the delivery of products until the receipt of the full payment. In the case that the payment is not made by the agreed due date, we will be entitled to: a) Demand the immediate payment of the outstanding amount. b) To charge an interest rate based on the reference rate applied plus 8% for the outstanding amount. c) To reject any new purchase orders or even to cancel any order in the manufacturing process, without assuming any liability whatsoever. (d) To retain undelivered purchase orders. e) Charge for any additional storage costs in waiting for payment.

5. In the case we should recover the amount owed due to the above-mentioned circumstances; all the costs of recovering the debt.

7. The purchaser shall only be entitled to setoff if counterclaims have been established as final and absolute, undisputed or accepted by us. Furthermore, the purchaser shall only be allowed to claim right of retention if the counterclaim is based on the same contractual relationship.

### 4. Terms of delivery and actual delivery

1. Our delivery obligation is subject to correct and timely delivery from our suppliers, unless we are responsible for incorrect or late delivery by our suppliers.

2. Terms or dates of delivery agreed upon are approximate. Terms of delivery apply only when all details of the sales contract are clarified from both the technical and commercial points of view and the purchaser has complied promptly with all obligations (especially presentation of official certificates, submittal of down payments and provision of securities and guarantees).

3. The time of ex works or ex stock delivery is decisive in order for the terms and dates of delivery to be observed. If the goods cannot be dispatched on time through no fault of our own, the terms of delivery are considered to have been observed at the time of notification of their readiness for dispatch.

4. Events of force majeure entitle us to postpone delivery for an amount of time equal to the duration of the impediment, including an adequate start-up time. This also applies when such events occur during an already existing delay. Events of force majeure include sovereign activities relating to monetary and trade policies and other sovereign activities, strikes, lock-outs, disruption of operations through no fault of our own (specifically, mechanical breakdowns, raw material or energy shortages, non-delivery by third parties, fire, etc.), obstruction of roadways, delay of import delivery/customs processing as well as any other circumstances which are beyond our control and which severely impede delivery or make it impossible, irrespective of whether these circumstances occur at our plant, a suppliers' plant or a subcontractor's plant. If, due to the abovementioned types of events, execution of the contract becomes unacceptable to one of the contract parties, this party may terminate the contract, but not prior to expiry of a 3-month period.

5. Our liability is limited to legal provisions insofar as the applicable purchase contract involves a forward deal pursuant to § 286 Clause 2 no. 4 BGB or § 376 HGB. Likewise, our liability is limited to legal provisions insofar as the purchaser may claim that his interest in ongoing contract execution is no longer valid due to a delivery delay which is our fault.

6. Furthermore, our liability is limited to legal provisions, insofar as any delivery delay is due to intentional or gross negligent breach of contract through our fault; for this purpose, any fault attributed to our representatives or agents shall be considered our fault. Insofar as the delivery contract is not based on an intentional breach of contract through our fault, our liability for damages is limited to normal, foreseeable damage.

7. Our liability is limited to legal provisions insofar as the delivery delay caused by us is based on a culpable breach of a major contractual obligation; in such an event, liability for damages is limited to normal, foreseeable damage.

8. In all other respects, in the event of a delivery delay, our liability for each full two-week period of delay, within the framework of a flat rate compensation for delays, is limited to a maximum of 3% of the delivery value. We reserve the right to demonstrate that the amount of damages is actually lower.

9. Other legal claims and rights of the purchaser are reserved.

### 5. Transfer of risk – Packaging cost

1. Unless otherwise provided for in the order confirmation, delivery "ex works" (EXW – Incoterms® 2010) applies. If other delivery



conditions have been agreed upon, Incoterms® 2010 shall still apply.

2. Transport packaging and other packaging according to German packaging regulations are not returnable; this does not apply to pallets and trays. The purchaser is obligated to dispose of packaging at his own expense.

3. If the purchaser requests it, delivery will be covered by transport insurance; all related costs shall be borne by the purchaser.

#### **6. Liability for defects**

1. For any warranty claims, the purchaser must comply with the verification and notice obligations pursuant to § 377 HGB.

(2. Once the purchaser has accepted the delivered goods, any claim for material defects which could have been identified at the time of acceptance is invalid. If the purchaser failed to identify a defect due to negligence, he may only assert his rights relating to this defect if the defect was intentionally misrepresented by an omission on our part or if we have guaranteed the quality of the goods.

3. If the purchaser presents a justified defect claim in good time, we may at our discretion repair the defect or deliver a flawless item (supplementary performance). If, after three attempts, supplementary performance has failed, or if we refuse supplementary performance, the purchaser shall be entitled to a reduction in the purchase price or withdrawal from the contract following an appropriate period of grace. Unless the defect is significant, the purchaser's right is limited to a reduction in the purchase price.

4. If the purchaser fails to immediately provide us with the opportunity to inspect the material defect which is claimed and if he fails to immediately provide the allegedly defective goods or samples of these, all rights relating to material defects become void.

5. We are responsible for expenses only in connection with the supplementary performance as far as these are appropriate, specifically in relation to the purchase price of the delivered goods, which is verified on a case-by-case basis. Expenses which accrue due to the transfer of sold goods to a site other than the headquarters or a branch office of the purchaser will not be paid unless this is in accordance with contractual use of the goods.

6. The purchaser's access rights pursuant to § 478 BGB shall remain unaffected. The statute of limitation in the event of delivery recourse pursuant to § 478, 479 BGB shall remain unaffected and shall be 5 years from the delivery of the defective items.

7. Liability due to culpable injury to life, body and health remains unaffected; this also applies to mandatory liability according to the Product Liability Act.

8. Any additional liability shall be ruled out.

9. The statute of limitations applicable to warranty claims shall be 12 months from the date of risk transfer.

10. The statute of limitations in the event of delivery recourse pursuant to § 478, 479 BGB shall remain unaffected and shall be 5 years from the delivery of the defective items.

#### **7. Joint and several liability**

1. In the event of breach of contractual and non-contractual obligations due to delay, impossibility, fault during contract negotiations and tort, our liability, including that of our employees, staff, representatives and agents, is limited to intentional and gross negligence and to normal damage foreseeable at the time of contract conclusion. In all other respects our liability for defects and

consequential harm caused by a defect shall be ruled out. This limitation does not apply to culpable breach of major contractual obligations insofar as achievement of the contractual purpose is jeopardized; to mandatory liability within the framework of the Product Liability Act; to injury to life, body and health and if and insofar as we have intentionally misrepresented defects of the delivered item by omission or we have guaranteed the delivery of flawless goods. Regulations governing the burden of proof shall remain unaffected.

2. Unless otherwise agreed, contractual claims which arise due to and/or in connection with the delivery of ordered goods shall be invalid starting at one year after delivery of the goods. Our liability for intentional and grossly negligent breach of duties as well as the statute of limitations for legal recourse (see above) shall remain unaffected. In the event of supplementary performance, the statute of limitations shall not start anew but shall be limited by the legal provisions.

#### **8. Reservation of proprietary rights, retention of goods**

1. We reserve the property of the purchased item until receipt of all payments in accordance with the delivery contract. In the event of purchaser behaviour which is contrary to the contract, particularly in the event of payment delay, we are entitled to take back the purchased items. Should we take back the purchased items, this does not imply withdrawal from the contract unless we have explicitly declared so in writing. Distraint of the purchased items by us always implies a withdrawal from the contract. After taking back the purchased items we are authorized to sell them otherwise and to offset the proceeds against purchaser's liabilities, less the appropriate selling cost.

2. The purchaser is obligated to treat the purchased items with care; in particular, he is obligated to insure them at his own expense against fire, water and theft with sufficient coverage equivalent to the replacement value.

3. In the event of distraint or other third-party acts, the purchaser shall immediately notify us in writing so that we may file suit pursuant to § 771 ZPO. As far as the third party concerned is unable to reimburse the extrajudicial cost of a suit pursuant to § 771 ZPO, the purchaser shall be liable for the loss.

4. The purchaser is entitled to resell the purchased items within the course of regular business; however, he assigns to us all payments amounting to our invoice total (including VAT) which accrue to him from the resale against his purchaser or third parties from the resale, independent of whether the purchased items are resold without or after having been processed. The purchaser remains authorized to collect these receivables even after such assignment. Our authorization to collect these receivables shall remain unaffected. However, we undertake to not collect the receivables ourselves as long as the purchaser meets his payment obligations using the proceeds, is not in default of payment and specifically no application for insolvency or reorganization proceedings has been filed and payments have not been suspended. If this is the case, we may request that the purchaser informs us of the assigned receivables including the name of the debtor and provides all information required to collect the payment. We may also request that the purchaser delivers the related documents and informs the debtors (third party) of such assignment.

5. Processing or redesign of the purchased item by the purchaser is always done on our behalf. If the purchased item is processed



together with other items which do not belong to us, we shall acquire co-ownership of the new item on a pro-rata basis according to the value of the purchased item (invoice total including VAT) in relation to the other processed items at the time of processing. In all other respects the item which results from processing shall be subject to the same provisions as purchased items which are subject to title retention.

6. If the purchased item is mixed with other items and unable to be separated from these items which do not belong to us, we shall acquire co-ownership in the new item on a pro-rata basis according to the value of the purchased item (invoice total including VAT) in relation to the other items at the time that they are combined. If the combination is done in such a way that the purchaser's items are considered the main item, it is agreed that the purchaser assigns to us co-ownership on a pro-rata basis. The purchaser shall therefore keep the wholly or partly owned items produced in this way for us.

7. We undertake to release securities at the purchaser's request insofar as the liquid value of our securities exceeds by more than 10% the receivables to be secured. Selection of the securities to be released is at our discretion.

8. In the event of any arrears resulting from the business relationship or previous obligations, irrespective of the amount involved, we are authorized to assert our right of retention with respect to prepared and ordered goods to be delivered.

#### 9. Important technical information

1. Our requirements with regard to technical standards and quality are very high, and we use the latest state-of-the-art equipment and tools. However, special circumstances can sometimes arise which are beyond our control.

2. The following applies to all of our products:

- a) The colour of the basic materials used (e.g. SAN) can vary depending on the raw material charges. This may lead to colour variations in the case of transparent and dyed items.
- b) Even though pre-industrial samples are intended to be representative of the industrial production, because of pigment and/or base material tolerances minor discrepancies between the samples and the industrial production may be beyond our control.
- c) In some cases we recommend customer-specific sampling. The customer service manager or officer in charge will inform you about the costs. If the customer decides that they do not require sampling, despite our recommendation, we will not assume any guarantee for serial production nor will we accept any complaint.
- d) For our standard packaging, a printable area has been defined. Please request details before starting your artwork and observe the information we provide about the delivery of print data. Please note that we can only confirm a definite printable area after having analysed your artwork. Should an artwork be partially or totally reset, great care should be taken when checking the amendments, since after approval on your part we will not hold ourselves responsible for any discrepancies.
- e) We do not suggest the usage of full wrap round labels on conical, round or cylindrical packaging components.
- f) We would request that you make sure that the packaging components are suitable for the desired purpose and

compatible with the product to be packed. In this respect, we do not assume any responsibility.

3. With regard to colour, please note the following:

- a) Component and ink colour(s) will vary to some degree.
- b) In the case of different wall thicknesses, it is difficult to coordinate the exact shade between two components. Unfortunately slight discrepancies may not be avoided.
- c) Colour variations of in mould coloration or surface finishes due to different types of polymers are unavoidable.
- d) Colour limit boards either in mould coloration or surface finishes cannot be set until completion of the first industrial production run.
- e) Depending on the type of colour effects used, slight to considerable flow marks may not be avoidable.
- f) All prices are understood as standard colours without effects and with a dosage of 2%. This means that after a specific colour has been approved we reserve ourselves the right to adjust the prices in accordance.

4. With regard to products with a soft touch respectively Adflex surface please note that:

- a) Bottles with an Adflex surface can make a light squeaking sound when caps are screwed on and off.
- b) Soft touch/Adflex surfaces are more sensitive than standard surfaces. Therefore we recommend a layered packaging, which will result in additional costs.
- c) Basically, Adflex bottles can be provided with hot foil embossing or silk-screen printing, but the adherence must be checked taking account of your artwork.
- d) Due to the lack of adhesion on soft touch lacquer, it is recommended that any decoration be applied below the lacquer. Decoration therefore has a more matt appearance.
- e) Please note that the difference between soft touch lacquered surfaces and Adflex in terms of haptic and visual appearance is minimal.

5. With regard to Airless products please note that:

- a) The container and pump for the airless packaging, especially in dark colours, are scratch and shock sensitive. We therefore suggest using a special handling system during production, which will result in additional costs.

6. With regard to solid wood jars / covers please note:

- a) Please note that solid wood packaging consists of elaborately handcrafted unique pieces and not veneered mass-produced goods. Therefore irregularities, unevenness like notches, small cracks and colour variations etc. may occur, this however emphasises the individual character of each piece. Furthermore, solid wood reacts to climatic conditions we would like to advise that some resistance may be felt when screwing the cap on the jar. This cannot be avoided.

#### 10. Place of venue – Place of performance

1. Unless otherwise stated in the order confirmation, the place of performance shall be our headquarters; however, we may also sue the purchaser in the court which has jurisdiction over his domicile.

2. The laws of the Federal Republic of Germany shall apply, and the United Nations Convention on Contracts For the International Sale Of Goods shall be waived.

4. In the event of any legal dispute resulting from the interpretation of the wording of these terms and conditions in the English language, solely the German version shall be decisive.