

General Terms of Sales of planetroll GmbH & Co. KG (Issue 07/2009)

## I. Preface and Applicability

- (1) These General Terms of Sale (GTS) apply to all business relations with our contract partners; though only if these are an entrepreneur (§ 14 German Civil Code), corporate body under public law or public fund assets.
- (2) The GTS in their respective version shall also apply to future contracts with the same contracting party without our being required to reference these for each individual case.
- (3) Our terms of sale shall be exclusively valid; we do not accept any contracting party's terms of sale contradicting or deviating from ours, unless we expressly accepted their validity in writing. Our terms of sale shall also apply if we execute the shipment to the contracting party without reservation, aware of the contracting party's contradicting or deviating terms of sale.
- (4) Individual agreements in particular cases with the contracting party shall always take precedence over these GTS.
- (5) Material declarations and complaints to be filed by the buyer against us following close of contract (e.g. deadlines, notices of defects, notice of cancellation or mitigation) require written form to be valid.
- (6) Any and all agreements between us and the contracting party for the purpose of fulfilling this contract are stipulated in writing within this contract.

## II. Offers and Offer Documents

- (1) Our offers are subject to change and non-binding. This also applies if we provide the contracting party with catalogues, technical documentations (e.g. drawings, plans, calculations, costing, reference of DIN standards), other product descriptions or documents – including in electronic format – to which we reserve the right of ownership and copyrights. The contracting party shall obtain our express written approval prior to passing our above documents to third parties.
- (2) A product order placed by the contracting party is considered a binding contract offer. Unless otherwise arising from the order, we are entitled to accept this contract offer within 2 weeks upon receipt. The acceptance may be made in writing (e.g. an order acknowledgement) or by delivering the object of the contract to the contracting party.

## III. Pricing, Payment Terms, Set-Off and Retention of Goods

- (1) Unless otherwise arising from our order acknowledgement, the prices valid at the time of close of contract apply, "ex works", with the exception of packaging; such shall be billed separately.
- (2) Our prices do not include mandatory sales tax; the statutory amount on the day of billing shall be indicated separately on the invoice.
- (3) The deduction of a discount requires a separate written agreement.
- (4) Unless otherwise arising from our order acknowledgement, the net (without deduction) purchase price shall be payable within 14 days from the invoice date. For contracts with a value of goods to be delivered of more than 25,000.- EUR we shall be entitled to demand a down payment in the amount of 30 % of the purchase price. The down payment is due and payable within 14 days from the invoice date.
- (5) With the expiration of the aforementioned payment deadline the contracting party is in default. While in default, the prices shall be subject to interest at the applicable legal default interest rate. We reserve the right to enforce further default damages. Our entitlement to commercial maturity interest from business people shall remain in effect (§ 353 German Commercial Code).
- (6) Our contracting party shall only be entitled to set-off rights and/or right of retention if his claim has been determined legal or is unchallenged.
- (7) If after the close of contract it becomes evident our receivables are endangered due to the contracting party's lack in economic capacity (e.g. due to filing a petition to open insolvency proceedings), we are entitled by law to refuse performance and – if applicable upon setting a deadline – to terminate the contract (§ 321 German Civil Code). For contracts on the manufacture of unique items (custom-made products), we may terminate the contract immediately; the legal provisions on the expendability of setting a deadline remains unaffected.

#### IV. Delivery Date and Delivery Delay

- (1) The delivery date shall be agreed individually or specified by us at the time the order is accepted. If this is not the case, the delivery date shall be approx. 6 weeks following the close of contract.
- (2) The start of the delivery deadline stated by us presumes the clarification of all technical issues. The compliance with our duty to deliver further presumes the timely and proper satisfaction of duties by the contracting party. The exception of the unsatisfied contract remains reserved.
- (3) If we are unable to comply with binding delivery dates for reasons beyond our control (unavailability of the service), we shall promptly inform the contracting party hereof and simultaneously communicate the new anticipated delivery date. If the service also cannot be provided within the new delivery deadline, we are entitled to terminate the contract in whole or in part; we shall promptly refund any return service already provided by the contracting party. In this sense, a case of unavailability of service is particularly delivery delays from our supplier if we have entered into matching cover transaction. Our legal cancellation and termination rights as well as the legal provisions for the processing of the contract to the exclusion of the duty to indemnify (e.g. the service and/or supplementary being impossible or unreasonable) remain unaffected. The cancellation and termination rights of the contracting party also remain unaffected.
- (4) The advent of default of our delivery shall be determined pursuant to the law. Each incident, however, requires notice by the contracting party. In the event we are delayed in delivering, the buyer shall be entitled to demand lump sum replacement of the damage caused by delay. The lump sum of the damage shall be 0.5% of the net price (delivery value) for each completed calendar week of delay, not to exceed 5% of the delivery value of the products delivered late. We reserve the right to provide evidence the contracting party has suffered no or significantly less damage than the aforesaid lump sum.

#### V. Delivery, Passing of Risk, Acceptance and Default of Acceptance

- (1) The start of the delivery date stated by us presumes the clarification of all technical issues. The compliance with our duty to deliver further presumes the timely and proper satisfaction of the contracting party's duties. The exception of the unsatisfied contract remains reserved.
- (2) Shipment shall be made ex „works/warehouse“, which is also the place of fulfilment. At the request and at the contracting party's expense the product will be shipped to another destination (drop shipment). Unless otherwise agreed, we are entitled to specify the shipping method ourselves (esp. shipping company, shipping route, and packaging).
- (3) The risk of accidental perishing and accidental deterioration of the product shall be transferred to the contracting party no later than the time of delivery. For drop shipments, however, the risk of accidental perishing and accidental deterioration of the product as well as the risk of delays shall already be transferred with the transfer to the carrier, the forwarder, or the person or establishment assigned with the dispatch. In the event an inspection has been agreed, such is essential in the transfer of risk. Incidentally, the legal provisions of the Work and Service Contract Law also apply for an agreed inspection as applicable. If the contracting party is delayed in accepting the delivery, the delivery or transfer shall be deemed satisfied.
- (4) If the contracting party is delayed in acceptance, fails to cooperate, or our shipment is delayed for other reasons for which the contracting party is liable, we are entitled to demand compensation for damaging arising from this, including additional expenditures (e.g. storage expenses). We will charge a lump sum compensation rate for this in the amount of 25.- EUR per calendar day, starting with the delivery date or - in the absence of a delivery date – with the notification of the product being ready for shipment.
- (5) Evidence of higher damages and our legal entitlements (especially the reimbursement of additional expenditures, adequate compensation, termination) remain unaffected; the lump sum, however, shall be imputed for other monetary claims. The contracting party shall be entitled to provide evidence we have suffered no or significantly less damage than the aforesaid lump sum.

## VI. Retention of Title

- (1) We reserve ownership in the goods sold until complete payment has been made for all of our present and future demands arising from the contract and the existence of a business relationship (secured claims).
- (2) The goods and/or objects subject to retention of title may neither be pledged to third parties nor assigned as collateral until the secured claims have been paid in full. The contracting party shall notify us immediately when and if third parties access goods of our property.
- (3) Any behaviour by the contracting party in breach of the contract, particularly the non-payment of the amount due, we are entitled by law to cancel the contract and to demand the goods due to retention of title and cancellation. In the event the contracting party fails to pay the price due, we shall only be entitled to assert these rights if we have first, to no avail, set a reasonable deadline for the contracting party to pay or setting such deadline is legally superfluous.
- (4) The contracting party shall be entitled to sell the goods under retention of title through proper course of business and/or process it. In this even the following supplementary stipulations apply.
  - (a) The retention of title shall extend to the products created by processing, mixing or combining our goods, to their full value, whereat we are considered the manufacturer. If by processing, mixing or combining with goods of third parties such party's right to retention continue to exist, we shall gain co-ownership proportionate to the billed value of the goods processed, mixed or combined. Further, the same shall apply to the resulting product as for the good delivered under retention of title.
  - (b) With this document the contracting party shall already assign to us as security the receivables against third parties emerging from the resale in full/in the amount of our possible co-ownership pursuant to the preceding paragraph. We hereby accept such transfer. The duties of the contracting party listed in para. 2 also apply in view of the assigned receivables.
  - (c) The contracting party shall remain entitled, in addition to us, to collect the receivables. We agree not to collect such receivables so long as the contracting party satisfies his payment obligations towards, does not default, no petition for opening insolvency proceedings have been filed, and there is no other lack of his economic capacity. In the event, however, this be the case, we shall be entitled to demand the contracting party to disclose to us the assigned accounts and their obligor, provide all information required for collection, surrender the associated documents and notify the obligors (third party) of the assignment.
  - (d) In the even the viable value of the securities exceeds our receivables by more than 10%, we shall release securities of our choice at the request of the contracting party.

## VII. Liability for Defects

- (1) The legal provisions shall apply to the rights of the contracting party in the event of defects in quality or title (including wrong delivery and short shipments as well as improper assembly or inadequate assembly instructions), unless otherwise specified below.
- (2) The basis of our liability is primarily the agreement made on the quality of the goods. The product descriptions (including those from the manufacturer) marked as such and provided to the contracting party prior to placing an order or included into the contract in the same manner as these GTC shall serve as an agreement on the quality of the goods.
- (3) Unless the quality was otherwise agreed, whether or not a defect is present shall be judged based on legal provisions. However, we do not assume any liability for public statements made by the manufacturer or other third parties (e.g. advertising statements).
- (4) Any claims based on defects asserted by the contracting party presumes he has satisfied his legal obligations to examine and notify (§§ 377, 381 German Commercial Code). If defects are noted during inspection or thereafter, we shall promptly be notified hereof in writing. Such notification is deemed immediate when made within two weeks, whereas the timely submission of the notification shall suffice to protect this deadline. Regardless of the duty to examine and notify, the contracting party shall notify us within two weeks of apparent defects (including wrong or short shipment) within two weeks from the date of delivery, whereas the timely submission of the notification shall again suffice to protect the deadline. In the even the contracting party fails to properly examine and/or notify, no liability will be accepted for the unreported defect .
- (5) If the delivered good is defective, the contracting party is first entitled to his choice of remedy of defect (remedy) or delivery of good free from defects (replacement) as supplementary performance. If the contracting party fails to express which of the two rights he is choosing, then a deadline may be set in this matter. If the contracting party fails to choose within the stipulated period, the right of choice shall be transferred to us with the expiration of the deadline.
- (6) We shall be entitled to base the supplementary performance owed on the contracting party paying the amount due. The contracting party, however, is entitled to retain a portion of the purchase price in the amount appropriate for the defect.

- (7) The contracting party shall allow us the time and opportunity required for the supplementary performance owed, particularly to surrender to us the faulty good for purposes of examination. Pursuant to the law, in the event of replacement the contracting party is to surrender to us the defective item.
- (8) The expenses required for purposes of examination and supplementary performance, particularly shipping, transport, labor and material costs, shall be at our expense provided a defect is actually present. If, however, the contracting party's demand for removal of defects is determined unjustified, we are entitled to demand reimbursement of the expenses arising herefrom from the contracting party.
- (9) In urgent cases, e.g. under endangerment of the plant safety or to prevent disproportional damages, the contracting party shall be entitled to remove the defect themselves and to demand from us reimbursement of expenses objectively required for this. We must be notified of just self-remedy without delay, if possible beforehand. The right of self-remedy does not exist if we would by law be entitled to refuse the respective supplementary performance.
- (10) If the supplementary performance has failed or a reasonable period for supplementary performance, to be set by the contracting party, has passed to no avail or is superfluous pursuant to the law, the contracting party is entitled to cancel the contract or reduce the price. The right to cancel does not apply for negligible defects.
- (11) Demands for compensation or replacement of futile expenses made by the contracting party are only valid in accordance with cipher VIII. and are otherwise excluded.

#### VIII. Miscellaneous Liability

- (1) Unless otherwise arising from these GTS including the subsequent stipulations, in the even of breach of contractual and non-contractual duties we are liable according to the respective legal provisions.
- (2) We shall be liable for damages – regardless of the legal basis – in the event of premeditation and gross negligence. For simple negligence we are solely liable
  - a) for damages arising from injury to life, body or health,
  - b) for damages arising from the breach of an essential contract duty (a duty whose fulfilment allows for the proper execution of the contract and on whose compliance the contracting party routinely relies and may rely); in this event our liability is limited to replacement of the foreseeable, typical damage.
- (3) The limitations of liability resulting from para. 2 do not apply if we have maliciously concealed a defect or have assumed warranty for the properties and condition of the goods. The same applies for the contracting party's demands made according to the Product Liability Act.
- (4) The contracting party is solely entitled to cancel or terminate the contract due to breach of duty not consisting of a defect, if we are responsible for the breach of duty. The contracting party is not entitled to free right to cancel (particularly as per §§ 651, 649 German Civil Code). Incidentally, the legal requirements and consequences apply.

#### XI Period of limitation

- (1) The general period of limitation for claims arising from material defects and defects in title, with the exception of the legal provision, is 1 year from the date of delivery. If the parties have agreed to an acceptance, the period of limitation starts with the acceptance.
- (2) If, however, the good is a structure or an object which has been used for a structure according to its typical use, resulting in the defect, (building material), the period of limitation is 5 years from the date of delivery. Special legal provisions on third party claims to surrender in rem, seller's malice, and for claims in the supplier recourse for final delivery to a consumer, shall remain unaffected.
- (3) The above periods of limitation also apply to the contracting party's contractual and non-contractual indemnity claims based on a defect of goods, unless the use of the regular statute of limitations (§§ 195, 199 German Civil Code) would result in a shortened period of limitation in individual cases. The statutes of limitations of the Product Liability Act remain unaffected in any case. In other respects, according to cipher VIII, only the statute of limitations applies to the buyer's indemnity claims.

## X. Applicable Law and Jurisdiction

- (1) These GTS and all provisions of contract between us and the contracting party are subject to the law of the Federal Republic of Germany to the exclusion of all international and supranational (contract) legal system, particularly of the UN CISG. The requirements and effects of the retention of title, on the contrary, are subject to the laws of the respective place the goods are located in, as far as the law chosen is inadmissible or invalid in favour of the German law.
- (2) If the buyer is a businessman in the sense of the German Commercial Code, corporate body under public law or a public-fund asset, the exclusive – and international – jurisdiction for any disputes directly or indirectly arising from the contract relationship shall be our headquarters in D-89597 Munderkingen. However, we are also entitled to file claims at the buyer's place of general jurisdiction.