

Conditions of Sale Stern-Wywiol Group

as at 1 January 2017

1. Relevant Conditions; Applicability

- 1.1 The following conditions of sale shall in addition apply to all deliveries and services of the companies of the Stern-Wywiol Group with a registered office in Germany unless otherwise expressly agreed in writing in individual cases (cf. **Clause 1.3**). They shall further apply without express agreement to all future business between the parties
- 1.2 Our conditions of sale also apply if we are aware of a purchaser's conditions which are contrary to or which differ from our conditions of sale and complete the delivery or service without reservation. Contrary terms and conditions of the Purchaser shall only be valid if they have been expressly confirmed by us in writing.
- 1.3 **Individual agreements made with the Purchaser in particular cases (including side letters, supplements and amendments) shall take priority over these conditions of sale in every case.** For the content of such agreements a written contract or our written confirmation respectively shall be decisive.
- 1.4 Our conditions of sale shall only apply to business transactions with business entities (as defined in German Civil Code Article 14, BGB), legal public entities and trusts governed by public law.
- 1.5 To the extent that the written form is required in our conditions of sale, this will be satisfied by transmissions made by telefax or electronic data transfer.

2. Manufacturing of the Products; Responsibility for Labelling Regulations; Packaging

- 2.1 We shall manufacture the product, to the extent applicable, in accordance with German Food Law or Feed Law respectively.
- 2.2 The Purchaser shall provide us with requirements under labelling law for the packaging and labelling of the products. The responsibility for compliance of labelling with the statutory provisions and regulations in the respective sales market lies with the Purchaser so far as these have been provided to us by the Purchaser, or if it is agreed that the delivery of the product shall be made in neutral packaging without a particular labelling.
- 2.4 The stocks of packaging materials shall remain our property.

3. Conclusion and Content of the Supply Agreement

- 3.1 Our offers are always made subject to confirmation unless we specify a binding validity period.
- 3.2 A supply agreement shall first come into being when we expressly confirm in writing the Purchaser's order or we make the delivery without a separate confirmation.
- 3.3 For the content of the supply agreement our confirmation of order shall be decisive, provided the Purchaser does not promptly contradict the terms in writing after receipt of our confirmation of order. For deliveries without a separate confirmation of order our delivery note shall serve as the confirmation of order.

- 3.4 All statements, in particular those contained in our offers and brochures or statements made in the context of our advice and information, give only approximate values and are not guarantees or specifications of conditions unless otherwise expressly stated in our confirmation of order or if the applicability for the purposes anticipated under the contract requires exact conformity. To the extent that there are no limits on permissible variations stated in the confirmation of order, and that no expressly acknowledged Purchaser specifications are given, variations which are customary in trade are permitted. Any public statements, promotion or advertising by us or third parties do not constitute any specification of conditions of the goods. If however the Purchaser is entitled to a warranty claim or claim for damages, then **Clause 7** shall apply.

- 3.5 The INCOTERMS which are in force at the time of conclusion of the contract shall apply.

4. Delivery and Passing of Risk

- 4.1 Where delivery periods and delivery dates are not expressly referred to in the confirmation of order as binding, the Purchaser can set us a reasonable deadline for delivery two weeks after the expiry of these delivery periods and dates. We shall be in default in the first instance upon the expiry of this further deadline. Delivery periods shall not begin to run until the Purchaser has fulfilled its possible contribution or payment obligations.
- 4.2 In the case of delayed delivery or the impossibility of delivery we are only liable for damages in accordance with **Clauses 7.4 to 7.7**. The damages for compensation that we must pay thereafter are limited to 0,5% of the value of the item to be delivered or part thereof for each full week of delay up to 5 % of the value of the delayed delivery or part.
- 4.3 In the event of a force majeure such as operational disturbances, transport delays, industrial action, in particular strikes or lock-outs, as well as non-delivery, incorrect or delayed deliveries by our own suppliers which have not been caused by us (self-supply reservations) and other hindrances to services which have not been caused by us, we can postpone the delivery for the duration of the hindrance and a reasonable start-up time. If this amounts to just a temporary hindrance to services or if as a result of the force majeure the hindrance lasts for longer than two months the parties are entitled to rescind the contract. In this case, the Purchaser is not obliged to provide its consideration (or consideration in part) and shall immediately receive back any payments that have already been made by him; he shall not be entitled to any claims for compensation.
- 4.4 We shall be entitled to make partial deliveries and partial services insofar as this is deemed reasonable for the Purchaser.
- 4.5 The place of performance is at the respective registered office of the Stern-Wywiol Group company.

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- 4.6 If delivery on demand is agreed, **Clause 4.7** shall apply correspondingly when demands for deliveries are not made in due time.
- 4.7 All sales are calculated ex works from the respective Stern-Wywiol Group company. Shipping and transport shall always be at the risk of the Purchaser. The risk shall be transferred to the Purchaser, also in the case of partial deliveries, at the latest when the shipment has been handed over to the transport company - irrespective of whether it belongs to one of our companies or is a third party – or for the purpose of the shipment the item has already left our works, insofar as **Clause 4.7** is not applicable.
- 4.8 Transfer of risk shall also take place in default of acceptance by the Purchaser. Storage costs shall be borne by the Purchaser after transfer of the risk. Without prejudice to our further claims we are entitled to charge storage costs at a flat rate of 0,5% of the amount of the invoice for each month or at the amount of the actual damages, unless one of the parties can prove higher or lower damages.
- 5. Prices; Payment; Invoices**
- 5.1 Our prices are calculated inclusive of standard packaging costs, but are exclusive of the respective statutory value added tax.
- 5.2 Unless otherwise agreed in writing, all shipping costs are to be borne by the Purchaser. These shall include any freight tariffs and duty rates that are valid on the day of the delivery and other charges payable on the shipment.
- 5.3 The Purchaser is not entitled to reduce our claims to counter claims or to exercise a right of retention unless the counter claims or right of retention are undisputed or legally ascertained.
- 5.4 The payment conditions shall be ascertained in the respective contracts.
- 5.5 If periods for payments are exceeded we shall charge interest at 8 percentage points above the respective basic interest rate of the European Central bank per annum, unless we can prove higher damages.
- 5.6 If there are justifiable doubts as to the Purchaser's ability to pay, in particular, payment arrears, subject to further claims, we may cancel payment targets granted as well as deliveries with advance payment or make concessions dependent upon other securities.
- 5.7 The Purchaser is not entitled to assign to any third parties claims arising out of this contract without our written consent.
- 5.8 We reserve the right to deliver our invoices in an electronic form as opposed to a paper form (by e-mail or De-Mail, computer fax or fax server, web-download or EDI).
- 6. Retention of Title**
- 6.1 All products delivered shall remain our property (retained goods) until the Purchaser has settled all claims existing and arising after the conclusion of the contract out of the business relationship with us.
- 6.2 Any treatment or processing of the retained goods shall take place with ourselves as manufacturer within the meaning of § 950 BGB, without any obligation on our part. Treated and processed goods shall be deemed retained goods. If the Purchaser carries out any treatment, processing, combination or mixing of the retained goods with goods from another source to make a new item or mixed item respectively, we are entitled to co-ownership in proportion to the invoice value of the retained goods at the time of delivery as against the value of the other processed or mixed goods. The part that is co-owned shall be deemed to be retained goods.
- 6.3 If the retained goods are combined with other things and one of the things which belongs to the Purchaser can be regarded as the principal thing within the meaning of § 947 BGB, it is hereby agreed that a co-owned part in proportion to the invoice value of the retained goods as against the value of the principal thing shall be assigned to us and the Purchaser shall preserve it for us free of charge. The part that is co-owned shall be deemed to be retained goods.
- 6.4 The Purchaser must preserve any retained goods for us free of charge. Upon request at any time in the place of storage, we shall have the possibility of carrying out stock taking and sufficient labelling. The Purchaser shall inform us without delay of details of any distraint or derogation of our rights by third parties so that we may use all legal means to prevent this from happening.
- 6.5 The Purchaser may only sell the retained goods in the normal course of business under his normal conditions and under an agreement as to a retention of title to the extent required by us, if it is guaranteed that the Purchaser's claims under this further sale are assigned to us in accordance with **Clauses 6.6 to 6.8**.
- 6.6 The Purchaser hereby assigns to us any claims arising out of the further sale of the retained goods, as well as in the context of works contracts or contracts for the delivery of chattels that are to be manufactured or produced together with all ancillary rights. These shall serve to the same extent to our security for the retained goods.
- 6.7 The Purchaser is only entitled to assign claims arising out of the further sale of the retained goods to third parties with our prior written consent.
- 6.8 If the Purchaser sells the retained goods together with other goods which were not supplied by us, the assignment of the claims arising out of the further sale shall only be up to the value of the invoice value of our retained goods at the time of the delivery. In the case of the sale of goods in which we have co-ownership rights pursuant to **Clause 6.2** and **6.3** respectively, the assignment of claims shall only be up to this co-owned share.
- 6.9 If the assigned claim is included in an ongoing invoice, the Purchaser shall hereby transfer a portion of the balance in an amount corresponding to this claim, including the final balance, to our current account.

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- 6.10 Until cancellation, the Purchaser is entitled to make any claims arising out of further sales pursuant to **Clauses 6.5 to 6.8**.
- 6.11 If the Purchaser fails to fulfil its obligations under this contract or other contracts with us or if we become aware of circumstances which reduce his credit worthiness, then (a) we may prohibit the further sale, treatment, processing as well as mixing or combination of the retained goods with other goods; (b) we can withdraw from this contract; then the Purchaser's right of possession in the retained goods shall expire and we can demand the retained goods (c) the Purchaser shall inform us on demand of the name of the debtor of the claims that have been assigned to us; (d) we are entitled to cancel the direct debit authorisation that was granted. The right to rescind pursuant to (b) applies in cases of reduced credit-worthiness only if the Purchaser is not willing to pay upon delivery or provide security in spite of our corresponding demand to do so.
- We will release the retained goods as well as any goods or claims taking their place to the extent that their value exceeds the level of the secured claims by more than 50%; the choice of the items to be accordingly released remains with us.
- 7. Warranty/Liability; Inspection for Defects**
- 7.1 The Purchaser must carefully inspect the goods without delay after their arrival at the destination point, in particular as to condition and quantity, even if examples or samples have been previously sent. If cases, boxes or other containers are sent random inspections shall be carried out. The delivery is deemed to be approved if no notification of defects is received by us in writing with an exact description of the defect within 10 days of arrival of the goods at the destination in the case of obvious defects and within 10 days of discovery in the case of defects which are not recognisable upon inspection.
- 7.2 Damages in transit must be notified to the carrier without delay; in such cases the notification obligations according to the German Freight Forwarder's Standard Terms and Conditions [ADSp] shall apply.
- 7.3 For notifications of defects which are justified and made in good time, we shall provide at our option post performance in the form of rectification or replacement delivery. If we fail to do so we shall incur liability under the statutory warranty provisions. For all claims for compensation that the Purchaser is entitled to due to or in connection with defects in the delivered goods **Clauses 7.4 to 7.7** shall apply
- 7.4 Claims for damages of the Purchaser, regardless of their legal basis - for example, delays, defective delivery or performance, breaches of binding obligations, tortious act - shall be excluded, unless mandatory liability exists. For example, this is the case in the event of injury to life, body or health as well as in the event of deliberate acts, gross negligence, or breach of essential contractual obligations, the fulfilment of which first facilitates the due implementation of the contract and upon their compliance the Purchaser may regularly rely, by us, our statutory representatives or employees, furthermore in the event of liability pursuant to the Product Liability Act or to the extent that we have given an express guarantee (§ 443 German Civil Code) as to the quality of a product or an exercise risk. An alteration of the burden of proof to the disadvantage of the Purchaser does not result from this.
- 7.4.1 Our liability for gross negligence as well as negligent breaches of essential contractual obligations shall be limited to the foreseeable damage which is typical for this type of contract.
- 7.4.2 Insofar as the liability pursuant to the preceding provisions is limited, such limitation shall also apply to the personal liability of our employees, workers, co-workers, representatives and assistants.
- 7.4.3 Furthermore we shall also not be liable for the gross negligence of our ordinary employees to the extent this does not amount to a breach of essential contractual obligations within the meaning of **Clause 7.4**, irrespective of any possible liability for organisational negligence pursuant to **Clause 7.4**.
- 7.5 We are not liable insofar as we have manufactured or packaged the products in accordance with specifications given by the Purchaser and do not know and should not have known by means of other products developed by us that this would cause the products to be defective.
- 7.6 At our request, the Purchaser is obliged to pursue at first all claims which come into question against our pre-suppliers. For this purpose, we are obliged to assign to the Purchaser any possible warranty or compensation claims that we have against our pre-suppliers. If the claim made against our pre-supplier remains unsuccessful, the Purchaser is entitled to make a claim against us pursuant to this **Clause 7** to the extent that the Purchaser assigns back to us the claims for defects that we assigned to him.
- 7.7 All warranty claims by the Purchaser are subject to a limitation period of one year calculated from the beginning of the statutory limitation period. This shall not apply if we have fraudulently concealed the defect or if our mandatory liability for compensation pursuant to **Clause 7.4** is applicable.
- 8. Applicable Law / Jurisdiction**
- 8.1 The dealings between us and the Purchaser shall be governed by the laws of the Federal Republic of Germany. The UN Convention on the International Sale of Goods (CISG) as well as other, including future, cross-national or international conventions shall not be applicable even after their adoption by German law.
- 8.2 Jurisdiction for all disputes in connection with delivery transactions shall be at our discretion either Hamburg or the registered office of the Purchaser, for claims by the Purchaser jurisdiction shall exclusively be Hamburg. Statutory provisions on exclusive jurisdiction shall remain unaffected.