

## **General Terms and Conditions of Business of Filigran Trägersysteme GmbH & Co. KG**

### **§ 1 Validity of the General Terms and Conditions of Business**

(1) The following business terms and conditions apply to all deliveries transacted by the Seller with business enterprises. Business enterprises in the sense of the present terms and conditions are natural and legal entities or private companies of legal capacity that transact business in the exercise of their commercial or stand-alone occupational activities.

(2) Any divergent provisions, particularly any terms of purchase of the Buyer, shall only become an integral part of the contract if this has been explicitly agreed in written form.

### **§ 2 Formation of Contract**

The offers made by the Seller are subject to change. Upon placing an order for goods, the Buyer commits fully to its intention to acquire said ordered goods. The Seller is entitled to accept the offer to form a contract implied in the Buyer's order placement within a space of four weeks after the Buyer has despatched its offer. The acceptance may be either in written form or by way of the delivery of the goods.

### **§ 3 Delivery**

The delivery is carried out at the expense of the Buyer at the location specified by the Buyer. The Buyer shall name a receiving centre that can be reached by long vehicles on roads that are easily accessible to vehicles. The Buyer shall unload the consignments at its own risk. The delivery date shall be notified to the Buyer in good time, at least 24 hours prior to delivery. If it proves impossible to unload the vehicle immediately upon delivery, the extra costs thereby incurred shall be borne by the Buyer.

### **§ 4 Term of Delivery**

(1) The term of delivery shall start to run upon receipt of the Buyer's order by the Seller, yet not before the documents possibly to be procured by the Buyer have been received or before the agreed down-payment has been received.

(2) Compliance with the term of delivery shall be deemed given if, prior to the lapse thereof, readiness for despatch has been notified or the item to be delivered has left the Seller's works.

(3) The term of delivery shall lengthen if measures are taken during the course of industrial dispute, particularly strikes and lock-outs, and upon the occurrence of unforeseen obstacles that are not dependent on the will of the Seller (such as operational disruptions, delays in the supply of essential materials). In this case, the term of delivery shall be extended for the duration of such measures and obstacles. Should the resulting delays exceed a period of six (6) weeks, both Contracting Parties shall be entitled to cancel the contract in respect of that particular scope of supply and services. No other claims exist.

### **§ 5 Payment**

The Seller shall not be bound to accept cheques. If they are accepted, however, this shall only be as conditional payment.

### **§ 6 Buyer's Default of Payment**

(1) With a delay in payment and substantiated doubt as to the Buyer's ability to pay or its creditworthiness, the Seller - notwithstanding its other rights - shall be authorised to call for securities or advance payments for outstanding deliveries and to render all claims to payment derived from the business transactions due for immediate payment; the Seller shall also be authorised to call for payment in cash or a security deposit in return for any bills taken by way of provisional performance.

(2) The Buyer undertakes to waive assertion of the right to withhold payment. The Buyer shall only be able to offset against counter claims to payment in the event the counterclaims are undisputed or have been established as legally binding.

## **§ 7 Passage of Risk**

(1) The risk of loss, deterioration and dispatch shall pass in all cases to the Buyer the moment the item to be delivered leaves the Seller's business or storage premises. This shall also apply if delivery to a specific location has been arranged.

(2) If the despatch of the goods is delayed for reasons for which the Seller is not responsible, the risk shall pass to the Buyer upon notification of the readiness for despatch. The same shall apply if the Seller makes use of its right to withhold.

## **§ 8 Retention of Title**

(1) All consignments shall be delivered subject to the retention of title. The delivered goods shall remain the property of the Seller until the purchase price has been paid in full and all other claims of the Seller in respect of the Buyer from running business transactions (with payment by cheque until honouring of cheque) have been satisfied. The Buyer shall be authorized to dispose of the purchased goods in regular business proceedings.

(2) If the delivered goods are processed by the Buyer, processing shall be on behalf of the Seller, which is hence deemed to be the manufacturer as defined in Section 950 BGB [German Civil Code], and shall acquire ownership of the interim or final product. In the event the goods are processed together with others, not belonging to the Buyer, the Seller shall acquire co-ownership of the new item to the extent of the value of the delivered goods in proportion to the value of the other goods, not belonging to the Buyer, at the time of processing. If the goods subject to the retention of title are incorporated by the Buyer as significant components into third-party real estate, the Buyer shall already now assign its third-party claim to payment to which it is entitled to the Seller to the amount of the value of the goods that are subject to the retention of title.

(3) Already now, the Buyer shall assign its third-party claims derived from resale to the extent of the value of the goods to which title is retained, i.e. the Seller's co-owned part of the article (Clause 8 par. 2), to the Seller as collateral. The Seller shall accept said assignment. The Buyer shall be entitled and is obliged to collect the claims to payment, unless the Seller revokes said authorisation. The Seller's authority to collect the claims to payment itself shall not be affected hereby.

(4) The authorisation of the Buyer to collect payment shall expire without explicit declaration on the part of the Seller if the Buyer ceases to render payment. The Seller shall not make any use of its authority to collect payment as long as the Buyer continues to honour its duties to render payment.

(5) The Seller undertakes at the request of the Buyer to select and release the securities to which it is entitled under the foregoing conditions, providing the value of the securities to be realised tops the claims to be secured by more than ten percent.

(6) The Buyer shall not be allowed to pledge or assign the delivered articles as collateral. In the event the goods are pledged or seized or otherwise disposed of by third parties, the Buyer shall inform the Seller immediately and provide all necessary information and documentation for protecting the rights of the Seller.

## **§ 9 Guarantee**

(1) The responsibility of the Seller to guarantee the goods shall be limited at its own discretion - subject to due notification of defects within the prescribed period - to replacing delivery or rectifying a defect. Should subsequent performance not be successful, the Buyer shall, as matter of principle, be able to call for a reduction of payment (decrease) or rescind (cancel) the contract. With a minor infringement of contract, the Buyer shall not be entitled to rescind the contract.

(2) If the Buyer choses to rescind the contract owing to a defective title or material defect following subsequent performance that was not successful, the Buyer shall not also be entitled to claim compensation for damages on the grounds of the defect.

After subsequent performance that was not successful, if the Buyer decides to claim damages, the goods shall remain with the Buyer if this can be reasonable expected of the Buyer. Compensation for damages shall be

limited to the difference between the purchase price and the value of the defective item. This shall not apply if the Seller acted maliciously and was responsible for the infringement of contract.

(3) Goods about which complaints have been filed shall only be returned subject to the express consent of the Seller.

(4) The period of guarantee shall be one year as from delivery of the goods.

(5) As matter of principle, the properties and condition of the goods shall be as laid down in the manufacturer's product description.

(6) If the Buyer is provided with defective instructions for installation, the Seller shall only be bound to provide instructions that are not defective and this, only if the defective installation instructions are in conflict with the proper installation instructions.

(7) The Buyer shall receive no guarantees from the Seller in a legal context. The manufacturer's guarantees shall not be affected hereby.

#### **§ 10 Liability**

(1) The Seller shall bear no liability for any slight breach of insignificant contractual duties. In the case of slight negligence in the breach of important contractual duties, the Seller's liability shall be limited to foreseeable, typical, direct average damages, given the nature of the goods. This shall also apply for slight negligence in breaches committed by the Seller's legal representatives or vicarious agents.

(2) The Seller shall not be liable for damages that are derived during loading or unloading the goods by the Buyer, unless damages are derived from gross negligence or the intention of the Seller.

(3) The aforementioned restrictions of liability shall not apply for injury to body and health attributable to the Seller or for the loss of life of the Buyer.

(4) Claims to damages of the Buyer because of a defect shall become statute-barred one year following delivery of the goods. This shall not apply if the Seller is to be blamed for malicious conduct.

#### **§ 11 Loading and Unloading**

(1) The goods shall be loaded and unloaded at the risk of the Buyer.

(2) Wire strap loops [Walzdrahtschlaufen] and triangle hooks [Triangelösen] shall not be used as lifting aids.

(3) The loading aids/hoists shall only be lifted using a traverse.

#### **§ 12 Place of Performance and Jurisdiction**

For all liabilities derived from the delivery transacted, the location of the main branch of the Seller shall be the place of performance. For all disputes derived from the deliveries transacted, the place of jurisdiction shall be the location of the Buyer's main branch, if the Buyer is a business enterprise. The Seller shall also be entitled to file action at the location of the Buyer's headquarters.