

# General Terms and Conditions of Business

## **1. Scope of Application**

Our terms of delivery, performances and offers shall exclusively apply on the basis of these present General Terms and Conditions of Business. These shall thus apply to all terms and conditions of business, even if they have not been agreed upon again. Any counter-confirmations of the Purchaser referencing own terms and conditions of business or purchasing, respectively, are hereby explicitly objected to.

## **2. Prices**

Unless otherwise agreed upon, all prices shall be understood to be without obligation, incl. "Grüner Punkt", plus the respectively applicable VAT on the basis of the respectively valid price list. Applicable shall be the quotations valid at the date of delivery. Invoices shall exclusively be issued in and they shall be paid in as well. Any possible exchange risks and fluctuations shall exclusively be borne by the Purchaser. Any effects due to economic, fiscal or monetary policy measures taken by the governments or any other official authorities (e.g. EC measures) resulting in unforeseen and uncalculated price increases shall entitle the manufacturer to effect appropriate price increases as well.

## **3. Delivery**

Unless otherwise agreed upon, delivery shall be "free Purchaser's address" within the Federal Republic of Germany for an ordered value of Euro 250.- and more. For ordered values below Euro 250.- delivery shall be effected for the account and at the risk of the Purchaser. Any costs incurring due to a delay in delivery or failure to accept the goods (storage costs or costs for re-delivery) shall be borne by the Purchaser. Should the Purchaser remain silent upon expiry of a reasonable additional period set to him, should he refuse acceptance or should he explicitly declare his unwillingness to accept the goods, the Seller shall be entitled to rescind the contract or to claim damages due to non-performance. For storage due to non-acceptance, the Seller may use a forwarder of his choice. During the Purchaser's default the Seller shall only be liable for intent and gross negligence.

## **4. Payment**

Unless otherwise agreed upon, payment shall be effected within 14 days after date of invoice at 2% discount or within 30 days net, respectively. Any deductions and set-offs shall be excluded.

## **5. Retention of Title**

The Seller reserves rights of ownership in all goods supplied by him until full payment of all claims resulting from the business relationship being effected by the Purchaser. The Purchaser shall not be entitled to re-sell the goods prior to the complete payment, unless in regular business operations. The Seller shall ipso jure become creditor for any thus resulting claims against any third parties. The claims shall incur in his person. The Purchaser shall however continue to be entitled to collect such claims, unless being informed by the Seller that the latter wishes to collect these himself. Should the collection be effected by the Seller, he shall be obliged to forthwith hand out to the Purchaser any additional receipts remaining after settlement of the Seller's own claims or he shall re-transfer any still existing remaining claims, respectively.

## **6. Notification of Defects**

Any complaints shall be forthwith notified in writing latest, however, within 8 days after receipt of the goods. In case of the goods being damaged, the shipping documents shall include certifications of the respective carrier regarding the damage, so that the right for compensation shall continue to be reserved. Otherwise, any compensation cannot be granted. The complaints shall not have any effect on the fulfillment of the payment terms agreed upon. In case of complaints regarding the goods, representative samples shall forthwith be placed at our disposal for verification. Should the Seller be liable for this complaint, he reserves the right to make a replacement delivery or to grant a credit note, respectively. If the complaints are justified, the goods shall only be accepted if returned in a perfectly packed condition. Excluded shall be acceptance of any returned goods which have expressly been sold as special goods or action goods. Any claims for compensation to third parties shall not be acknowledged by us unless we have been informed on their types and scopes in advance. In case of compensation claims, the goods must not be destroyed unless agreed with us.

The Purchaser shall be obliged to forthwith inform the Seller about any third party attachments to the goods supplied under retention of title.

Should the Purchaser be in payment default or in financial difficulties, the Seller or any person authorized by him may request return of the goods, notwithstanding any of his other rights, he may access the Purchaser's store rooms and pick up any goods still present from his deliveries and to inspect all documents in order to determine his claims. The Seller undertakes to transfer to the Purchaser any ownership rights in the goods due to him and any claims assigned to him upon the latter's request if and insofar as their value exceeds by 20% the value of the claims due to the Seller.

## **7. Force Majeure**

In case of strikes, operational breakdowns, Force Majeure, deficiency in harvests, or other unavoidable incidents the Seller shall be entitled to cut down the orders to the same extent as the aforementioned incidents have impact on the delivery possibility.

## **8. Place of Performance and Payment (Place of Jurisdiction)**

Place of performance or payment as well as place of jurisdiction shall be the Seller's place of business.

## **9. Contract Amendments/Final Provisions**

Any additional provisions or any provisions deviating from the provisions above shall only be valid if made in writing. In case that any individual provisions are or become invalid or void the validity of the remaining provisions shall not be affected hereof.

(Kaltenkirchen, Mai 2007)

## **ERICH TRAPP GMBH & CO. KG**

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