

## **General terms and conditions**

### **1. General**

1.1 The terms and conditions outlined below are valid for all our deliveries and performances, including the later businesses, even though we do not explicitly refer to them at further orders, particularly at telephone or electronic orders if there are no other written agreements. Conditions of the customer are only valid if and to the extent that we expressly acknowledge them in written form. The acceptance of the delivered goods or the acceptance of our performance is basically regarded as acknowledgement of these delivery conditions.

1.2. Amendments of this contract, including this stipulation requiring written form, as well as supplements or additional agreements to this contract require the written form to be effective.

### **2. Conclusion and content of the delivery contract**

2.1 Our offers are subject to change. A delivery contract is concluded if we carry out the delivery. Our delivery note is regarded as order confirmation and is decisive for the content of the delivery contract. An order overview issued after the order of the customer previously exclusively serves information purposes and does not represent an order confirmation and/ or acceptance on our part and does not bind us. Oral explanations made by us or our sales representatives are always non-binding.

2.2 All information about our products, especially quality, colour, measurement, fit, equipment and weight information only reveal approximate values and are no quality specifications. In particular with regard to quality, colour and measurement information the predominantly natural qualities of our products shall be considered. Deviations usual in the industry, especially small stylish changes of the design as well as technically unavoidable quality, colour or measurement modifications are reserved. The quality, suitability, qualification and function as well as the purpose for use of our goods are only determined by our service description. Public statements, praises or advertisement made by us or third parties do not represent any quality information of the goods. Guarantees for the quality or durability of our goods shall be labelled as such in the order confirmation; this also applies to deliveries of samples and specimens.

2.3 If the customer requests a cancellation of his order or a withdrawal from the contract (in the following referred to as "cancellation"), without being authorized to do so, we can freely decide whether we approve the cancellation. In case of approval we are authorized to demand a cancellation fee to an amount of at least 20 % of the order value. After delivering or providing the goods for collection (at delivery ex works) a cancellation is excluded.

### **3. Delivery and transfer of risk**

3.1 Delivery periods specified by us are only valid approximately if there are no other explicit agreements in written form.

3.2 In case of delayed delivery or impossibility of delivery we are liable for claims for damages only in accordance with clause 7.

3.3 In case of force majeure, like for example, malfunctions, transport delays, measures within the context of labour disputes, as well as non-delivery, incorrect or delayed delivery of our previous supplier regardless for what reason (reservation as to oneself obtaining delivery), and in case of other performance obstacles, for which we are not responsible, we can delay the deliver for the duration of obstruction and an adequate starting time after it, or – if it is presumably a permanent obstacle – we can wholly or partly withdraw from the contract.

3.4 We are authorized to carry out partial deliveries. The place of fulfilment is Steinfurt.

3.5 If the customer is an entrepreneur, the dispatch and transport are always carried out at the risk of the customer. In this case the risk is also transferred to the customer at partial deliveries, as soon as the dispatch has been handed over to the transport person or has left the warehouse for dispatch. If the customer is a consumer, the risk is transferred to the customer with the handover of the sold goods. If the customer, however, rejects to accept the goods or if there is a delay of the dispatch of the delivery for other reasons, for which the customer is responsible, there is a risk transfer at the latest with the beginning of the acceptance delay of the customer. The warehouse charges after risk transfer are taken over by the customer. We are authorized to calculate warehouse charges as a lump sum with 0.5% of the invoice amount for each month or to calculate the actual damage, unless the customer proves a lower damage. In addition to this, we can set an extension period of 10 days for the customer and withdraw from the contract after termination without result or claim damages instead of the performance.

#### **4. Prices, payment**

4.1 The prices determined by us are always valid plus the respective legal sales tax. The packaging costs are separately calculated.

4.2 All dispatch costs shall be paid by the customer. Within this context the freight rates, duty rates valid at the day of dispatch as well as other fees occurring at the dispatch are decisive. The dispatch is carried out without insurance.

4.3 If between the conclusion of the delivery contract and the delivery the prices of our previous suppliers, freight costs and/ or public charges and thus our expenses change, we are authorized to correspondingly increase our prices. In this case, the customer is immediately informed about the new prices. For consumers this does only apply if the delivery shall be carried out later than four (4) months after ordering the goods.

4.4 The customer shall not assign claims resulting from this contract to third parties without our approval. The customer is not authorized to reduce our claims by counterclaims or to assert a right of retention unless these are acknowledged by us in written form or have been determined in a legally binding manner.

4.5 The purchase price shall be paid within 31 days after the invoice date, at the latest. The following discounts are granted: (a) 5% discount from the invoice amount if the customer takes part in our direct debiting; (b) 4% discount from the invoice amount at a payment within ten days after the invoice date; (c) 2.25% discount from the invoice amount at a payment within 30 days after the invoice date.

4.6 When exceeding the payment periods the legal interest rate according to § 288 Civil Code is valid, unless a higher or lower damage is proven.

4.7 Our claims immediately become due regardless of the term of any bills of exchange on account of fulfilment if contractual provisions are not observed by the customer. In case of payment delay, bill protests and suspension of payment of the customer we can assert the immediate payment of our total claim – including any claims resulting from outstanding bills of exchange – regardless of the agreed due date. This also applies if we are informed about circumstances which give reason for reasonable and essential doubts with regard to the financial solvency or creditworthiness of the customer, also if these circumstances have already been existing at the order of the goods, however, we did not know them or did not have to know them. In all these cases we are authorized, as well, to perform outstanding deliveries only against advance payment or provision of security if the advance payment or security is not made within two weeks and to withdraw from the contract without setting a new deadline. Further claims remain unaffected.

## **5. Title retention (in the following abbreviated as "TR")**

5.1 All delivered goods ("goods supplied under reservation") remain our property until the customer has paid all existing claims and, if he is an entrepreneur, claims resulting after the conclusion of contract.

5.2 The customer shall keep the goods supplied under reservation safe for us. On request inventory taking and labelling shall be made possible for us at any time at the location of the respective storage. The customer shall immediately inform us about pledges or other interference with our rights due to third parties indicating all details.

5.3 The customer shall only be authorized to sell the goods supplied under reservation agreeing a title retention within the scope determined by us within the context of a proper business operation, if it is guaranteed that his claims resulting from this are assigned to us according to clause 5.4 to 5.6. The customer is authorized to collect the claims assigned to us until our cancellation.

5.4 By this, the customer already assigns the claims, to which he is entitled due to the resale of goods supplied under reservation against his purchasers, to us. They serve as security to the same extent as the goods supplied under reservation. The customer shall only be authorized to assign the claims to third parties with our previous written approval.

5.5 If the goods supplied under reservation of customers together with other goods not supplied by us are sold at a total price, there will be the assignment of the claim resulting from the sale to the amount of the invoice value of the respectively sold goods supplied under reservation.

5.6 If the assigned claim is taken up in a current account, the customer shall already herewith assign to us part of the balance the amount of which shall correspond to such claim including the closing balance of the current account.

5.7 If the value of the securities existing for us exceeds the secured claims entirely by more than 20 %, we shall be obliged to release securities at our own discretion on request of the customer.

5.8 If the customer does not fulfil the obligations resulting from this contract or other contracts or if we are informed about circumstances which reduce his creditworthiness, we can (a) prohibit the resale of the goods supplied under reservation; (b) withdraw from

this contract; then the right of the customer to possess the goods supplied under reservation expires and we can claim them; then we are authorized to enter the premises of the customer and to take possession of the goods supplied under reservation at the expenses of the customer and to best possible use it, regardless of the payment and other obligations of the customer, by means of private sale or by means of an auction; we shall offset the redemption proceeds after the deduction of costs incurred to the customer against his liabilities; we shall refund any balance thereof; the (c) shall inform us about the names of the debtors of the claims assigned to us on request, so that we shall reveal the assignment and collect the claims; all proceeds arising from assignment must be passed on to us in each case immediately after receipt, if and as soon as our claims against the customer are due; we (d) shall be entitled to cancel the direct debit authorization that was granted.

## **6. Limited distribution**

6.1 The customer is member of our selective distribution system and shall only sell the delivered goods in retail stores operated by him, about which we were informed in written form or which are indicated in the order, for example, as delivery address and are admitted by us. The customer shall only sell the supplied goods to final customers or traders authorized by us. Before the customer sells the goods to a trader he shall check by means of suitable measures whether the trader has been authorized by us.

6.2 For each case of culpable breach against the distribution limitations mentioned in clause 6.1 the customer shall oblige himself to pay to us a contractual penalty up to three times the amount of the sales revenue achieved by the breach; unless a higher or lower damage is proven. The customer shall be obliged to immediately inform us about the amount of the sales revenue achieved by him contrary to agreement.

## **7. Guarantee/liability**

7.1 The customer shall examine the supplied goods immediately after the arrival at the destination also in case of previous supply of samples or specimen and especially inspect them for measurement and quantity as well as their external features and quality. The delivery shall be regarded as approved if no defect complaint could be determined within eight (8) days after the arrival of the goods at the destination or if the defect could not be recognized at the examination, if it has been received by us within eight (8) days after its discovery in written form with an exact description of the defect. Defect complaints shall always be sent to us. A complaint towards sales representatives is not sufficient. The freight forwarder shall immediately be informed about transport damages in accordance with the duties of disclosure of the German Freight Forwarders' Standard Terms and Conditions.

7.2 If a notification of defects is justified and has been made in due time we shall provide at our option post performance in the form of rework or compensation delivery if the customer is an entrepreneur. If the customer is a consumer, he first of all shall have the choice whether our post performance shall be carried out through rework or compensation delivery. We shall be authorized, however, to refuse the type of selected post performance if it is only possible with unreasonable costs and the other type of post performance remains without essential disadvantages for the customer.

7.3 If a rework or compensation delivery finally fails, the customer shall reduce the purchase price or withdraw from the contract. In case of unessential defects the purchaser is not entitled to withdraw. If the customer decides to withdraw from the

contract after failed post performance, he shall not be entitled to claim for damages due to the defect.

7.4 The aforementioned regulations comprise the liability for defects for our goods. We particularly shall be liable for all other claims for damages to which the customer is entitled due to or in connection with defects of the supplied goods, regardless of which legal reason, exclusively in accordance with the clause 7.5 and 7.6.

7.5 For claims for damage due to culpable acts, regardless of which legal reasons, among others delay, defective delivery, breach of duties resulting from an obligation or duties at contractual negotiations, prohibited action, product liability (except liability according to the product liability law), we shall only be liable in the case of intention and gross negligence. The liability for slight negligence shall be excluded, unless the contractual purpose is essentially at risk by means of the breach. At any case we shall be liable for the contractually typical and foreseeable damage. This limitation is not valid for damages, which the customer suffers from a culpable violation of his life, body or health. A personal liability of our legal representatives, vicarious agents and company members for damages caused by them by means of slight negligence shall be excluded.

7.6 Claims for defects of an entrepreneur become time-barred within one year from the delivery of the goods. The same applies to the sale of used objects to consumers. In addition to this, claims for defects of consumers become time-barred within two years from the delivery of the goods. Claims for damage of the customer become time-barred within one year beginning with the termination of the year, in which the respective claim has been developed and the customer is informed about the circumstances causing the claim and us as claim debtor or had to be informed about without gross negligence. This does not apply if damages are caused by a deliberate act from our side.

7.7 Agreements between the customer and his purchasers, which exceed the legal guarantee claims, shall not have affect to our disadvantage.

## **8. Applicable law/ place of jurisdiction**

8.1 The law of the Federal Republic of Germany shall apply. The UN-purchase law (CISG) as well as other, also future intergovernmental or international agreements shall not be applied, even after being taken over in German law.

8.2 The place of jurisdiction for all disputes in connection with the delivery business shall be Steinfurt at our discretion or the headquarters of the customer, for complaints of the customer it shall exclusively be Steinfurt. Legal regulations for exclusive responsibilities remain unaffected. This place of jurisdiction stipulation shall not apply for customers who are non-merchants.

## **9. Final provisions**

9.1 Contracts with legal persons constituted under public law and public separate estates shall be treated as contracts with commercial businessmen.

9.2 If a provision of this contract is wholly or partly ineffective, the effectiveness of all other regulations of this contract remain unaffected by the ineffectiveness of this provision.

**Atair GmbH, 48565 Steinfurt, Wilmsberger Weg 12, District Court Steinfurt HRB  
2086 Managing Directors: Reiner Baumbach, Günter Hacke  
[Status January 2014]**