

## **General Terms and Conditions**

### **Scope**

1. The General Terms and Conditions (hereinafter the "Terms") set out here apply to all companies, public law corporate bodies and public law funds. Said Terms also apply in the event that we do not make specific reference thereto.

Our supplies and services are exclusively provided on the basis of the following Terms.

Customer terms and conditions only become effective upon issue of our express written consent to each individual contract concluded. In case the customer confirms the order, but in divergence from our Terms, only our Terms apply, even when we do not expressly reject same. Our Terms are deemed to have been accepted in full by the customer at the latest upon receipt of our goods deliveries.

### **General provisions**

2. Our offers are non-binding. Orders placed only become effective upon issue of our order acknowledgement, unless an agreement to the contrary has been concluded.
3. The details and illustrations contained in offers, pricelists, brochures and catalogues etc. represent approximate figures customary in the trade, unless we expressly denote them as being binding.
4. Information provided on the phone and personally is always deemed to be non-binding and not legally enforceable until we issue express written acknowledgement.

### **Long-term and on-call contracts, price adjustments**

5. We reserve the right to make price adjustments in the event of unforeseeable increases in costs, even in the case where orders have already been placed.

## **Confidentiality**

6. Each party shall only utilise all documents ( including samples, models and data ) and knowledge gained in the course of the business relationship for the common purpose, and duly keep secret its own documents and knowledge in respect of third parties when the other party deems same to be confidential or has obvious interest in their being kept confidential.

This obligation commences when the documents or knowledge are initially received and does not cease when business relations are terminated.

7. Said obligation does not apply to documents and knowledge that are commonly known or were already known to the customer upon receipt, without the customer having been bound to secrecy, or are passed on thereafter by an authorised third party or are developed by the receiving customer without utilization of secret documents or knowledge of the other customer.

## **Drawings and descriptions**

8. In the event that a party puts drawings or technical documentation pertinent to the goods to be supplied or their manufacture at the disposal of the other party such documents remain the property of the party making them available.

## **Terms of payment**

9. If not otherwise agreed our invoices are immediately due for net payment.
10. Should we have partly delivered faulty goods and the faults are undisputed, our customer is, nevertheless, obliged to pay for the remaining faultless goods.
11. The customer is only entitled to offset legally binding or undisputed counterclaims.
12. Should the due date be exceeded we are entitled to charge interest from the due date at the rate the bank charges us for current account credits, minimum, however, 8% above the prevailing base rate of interest of the European Central Bank. We reserve the right to assert claims for further damages. In particular, we are entitled to charge 20 EUROS plus VAT as a handling fee for each and every reminder.

13. In case of delayed payment we are entitled, after informing the customer in writing, to cease fulfilment of our obligations until payments are received.
14. Bills of exchange are not accepted, cheques only after agreement between the parties and only on account of performance. Liability for timely presentation of the cheque and for issuing the cheque protest is excluded.
15. In the event that after conclusion of the contract it becomes clear that payment is endangered by the inability of the customer to pay, then we are entitled to cease deliveries and set the customer an appropriate time limit in the course of which payment matches delivery or provide guarantees. Should the customer refuse, or payment is not effected within the period of time set, we are entitled to withdraw from the contract and demand compensation.

### **Delivery**

16. Provided no other agreements have been reached we deliver "ex works". Our notification of shipment or readiness for collection is decisive in complying with the delivery date or delivery period.
17. The delivery period will be extended accordingly when the provisions stated in § 51 exist. Same also will be extended in case of factory closures due to annual holidays for example.
18. Partial deliveries of acceptable volume are permitted and are to be invoiced separately.
19. Differences in delivered quantities of 10% in excess or short of the total ordered quantity are permitted. The overall price will change accordingly.

### **Shipment and passing of risk**

20. Goods which we notify to the customer as being ready for collection are to be collected without delay. Otherwise, we are entitled to ship them at our own discretion or to store them for the account and at the risk of the customer.

21. We shall choose the method of shipment and the route if no special agreement has been reached.
22. The risk passes onto the customer at the time the goods are handed over to the carrier or storage commences, at the latest, however, when they leave the factory or the warehouse. This also applies when we have assumed responsibility for shipment and have notified the carriers accordingly. We only take out shipment or storage insurance for the part of the delivery for which we are responsible.
23. Unloading is always the duty of the customer and takes place at the customer's risk and cost.

### **Delays in delivery**

24. Agreed delivery periods will be extended accordingly in the case of factory closures due to public holidays or annual works' vacations.
25. If delivery is delayed as a result of the circumstances listed in § 67 or through actions or omissions on the part of the customer a reasonable extension of the delivery period will be granted.
26. The customer is only entitled to withdraw from the contract if we fail to meet the delivery deadline subsequent to him granting us a reasonable extension.

### **Retention of title**

27. All goods remain our property until all receivables generated from the business relationship with the customer have been received. Our title on the goods is also not relinquished when payments are made for specially denoted receivables.
28. The customer is entitled to sell the goods within the course of orderly business provided he fulfils his duties resulting from the business relations with us in good time. The customer, however, shall not pledge or assign the goods as security. He is obliged to safeguard our rights in the event of the goods being sold on credit.
29. In case the customer violates his duties, in particular by delaying payment, we are entitled to withdraw from the contract and take back the goods after a reasonable

extension of the payment period for the customer proved to be unsuccessful. The legal provisions associated with the essentiality of setting a deadline remain unaffected. The customer is obliged to return the goods. We are entitled to withdraw from the contract when the instatement of insolvency proceedings is filed for against the customer's assets.

30. Any eventual processing or finishing of the goods is always carried out by the customer on our behalf. In case the goods are processed together with other items that do not belong to us, or are so amalgamated that they become inseparable, then we acquire joint ownership of the new product based on the ratio between the invoice value of the goods under retention and the other processed or amalgamated items at the time of processing or amalgamation. If our goods are inseparably amalgamated with other moveable goods to form a uniform product and if the other product is to be viewed as being the main product, then the customer assigns proportional co-ownership to us, provided he owns the main product. The customer safeguards ownership or co-ownership for us free-of-charge. The same applies to the product generated by processing, connection or amalgamation as for the goods subject to retention of title.
31. All receivables and rights resulting from the sale of goods to which we have the right of ownership will be immediately assigned by the customer to us for security. We hereby accept such assignment.
32. The customer shall immediately inform us and provide the necessary documentation for intervention on our part in connection with enforcement measures taken by third parties in respect of the goods under retention, in respect of receivables assigned to us or in respect of collaterals. This also applies to impairments of another nature.
33. If the value of the existing collaterals exceeds the receivables secured in total by more than 20%, we are obliged to release guarantees at our discretion at the customer's request.
34. Only returns which we have previously accepted are conceded with a minimum reduction of 20% of the purchase price.

### **Claims for defects / quality defects**

35. The condition of the goods is solely in line with the details listed in our catalogues, offers and, in individual cases, with the technical specifications expressly agreed upon with the customer in writing. If we are called upon to supply goods in accordance with customer drawings, specifications and samples etc., the customer assumes the risk of their suitability for the intended purpose. The point of time at which the risk passes - as set forth in § 22 - is decisive for the contractual condition of the goods.
36. The customer, or in the case of third-party deliveries, his customers, are obliged to immediately examine the goods for correctness and suitability upon receipt and to notify us in writing forthwith of any faults, wrong supplies or differences in quantity ( excess or short supplies ) upon detection. This also applies to supplies based on samples. In the event of faulty or wrong delivery, the customer shall refrain from any further processing, finishing or resale. The goods are deemed to have been accepted provided we have not received written, concrete claims for defects at the latest after 2 weeks - in the case of obvious defects from the date they were received, and in the case of defects that are not obvious from the date the customer became aware of same.
37. In case formal acceptance of the goods or an initial examination of samples has been agreed, claims for defects are excluded which the customer, upon immediate and careful inspection or initial sample examination, might have established.
38. We are not liable for defects in quality caused by unsuitable or improper transportation, improper storage, use, faulty assembly or commissioning by the customer or third parties, normal wear, faulty or negligent treatment. Nor are we liable for the consequences of improper modifications or maintenance work carried out by the customer or third parties without our express consent. The same applies to defects which only insignificantly affect the value or the suitability of the goods.
39. Claims for defects of quality fall under the statute of limitations after 12 months from date of delivery. This does not apply, to the extent that the law compulsorily prescribes longer periods, in particular for defects on a building or in connection with goods which in accordance with their normal mode of use were used in a building and which caused it to become defective.

40. We are to be given the opportunity of assessing the defects claimed. Goods subject to a claim for defects are to be immediately returned to us upon request. We assume responsibility for transportation costs when the claims are justified. In the event that the customer does not fulfil these obligations, or carries out modifications to the goods under claim without our consent, then he automatically forfeits the right to make claims for defects of quality.
41. In case of justified claims for defects submitted in good time we rework the goods at our discretion or supply faultless replacements.
42. If we are unable to fulfil these duties, or not in accordance with the contract within a reasonable period of time, the customer is entitled to set a final deadline within which period we must meet our obligations. Should we still be unable to fulfil our duties within this period, the customer is entitled to demand a price reduction, withdraw from the contract or either carry out reworking himself or have it performed by a third party for our account and at our risk. Reimbursement of costs is excluded to the extent that they increase as a result of the goods having been transported to another place subsequent to delivery, unless such action is in accordance with the proper use of the goods.
43. Legal claims to recourse on the part of the customer against us only exist insofar as the customer has not reached any agreements with his customer that go beyond the legal claims to defects. The extent of claims to recourse is as set forth in § 37, last sentence.

### **Miscellaneous claims, liability**

44. Insofar as nothing else to the contrary is agreed, any other miscellaneous and far-reaching claims by the customer against us are excluded. This applies in particular to claims for damages in connection with the violation of duties resulting from the contractual obligations and tort. We are not, therefore, liable for damages not incurred on the goods themselves. Above all, we are not liable for loss of profit or other loss of property incurred by the customer.
45. The above mentioned limitations of liability do not apply in the case of intent, gross negligence on the part of our legal representatives or managing staff or culpable violation of fundamental contractual obligations. In the event of culpable violation of

fundamental contractual obligations, we are only liable – except in the case of intent or gross negligence on the part of our legal representatives or managing staff – for contractually typical, reasonably foreseeable damage.

46. Furthermore, the limitation of liability does not apply in cases in which, according to the product liability law, liability exists for persons or material damage to privately used objects caused by faults on the goods supplied. The limitation is also not applicable in the case of injuries to life, body or health and the lack of warranted properties if and in as far as the purpose of the warranty was to protect the customer against damage not incurred on the goods themselves.

47. We accept no liability for verbal information, especially that supplied on the phone, since such information is always of a non-binding nature and of no legal force. We only accept liability of whatever nature for information supplied in connection with planning, consultation, processing and information of a similar kind when we have exclusively provided the customer, upon express written request, with our binding written proposals specifically relating to a certain project of which we are aware. The customer is, nevertheless, obliged to examine our proposals either himself, or have them examined by qualified specialists, taking our goods into consideration in respect of their suitability for the purpose for which he intends to use them.

48. This also applies insofar as our liability is excluded or limited to the personal liability of our employees, legal representatives and vicarious agents.

49. The legal regulations applicable to the burden of proof remain unaffected.

### **Statute of limitations**

50. All claims originating from deliveries and performance fall under the statute of limitations 12 months from the date of invoice.

### **Force Majeure**

51. Force Majeure, labour disputes, riots, administrative measures, failure to deliver goods on the part of our suppliers and other unforeseeable, unavoidable and serious events release us from our performance duties for the duration of the interruption and the scope of its effect. This also applies when the events take place at a time where



we find ourselves in default, unless we have caused such delay intentionally or through gross negligence. We are obliged within a reasonable framework to immediately provide the necessary information and bring the mutual obligations into line with the changed situation in good faith.

### **Industrial property rights/intellectual property**

52. "SPAX" possesses industrial property rights as well as usage and application rights in connection with copyrights in Germany and abroad ( hereinafter called "Intellectual Property Rights", "IPR" ). These rights cover fastening elements, in particular screws, bits and tool accessories ( hereinafter called "Subjects of the Contract" ). A summary of the IPR can be viewed, upon the request, during "SPAX" 's normal business hours.
53. "SPAX" grants the customer in connection with the subjects of the contract the right to use the IPR in Germany for the marking of the subjects of the contract. The granting of this right is always freely revocable and of a non-exclusive nature. The customer is entitled to use the rights granted solely for the purpose of advertising the subjects of the contract, in particular on his own internet website. No royalties are charged for granting these rights.
54. The granting of sub-licences to third parties as well as the assignment of the rights granted ( licence ) to third parties is not permitted.
55. The customer pledges to only use IPR in the form provided by "SPAX" and is obliged to always indicate that they are IPR, especially trademark rights and copyrights, belonging to "SPAX". The notification must be given exclusively in the manner specified and used by "SPAX" themselves. The subjects of the contract are to be solely contained in customary packs and not offered, advertised or marketed singly. Illustrations must bear a reference of source and may not be furnished with their own logo, watermark, inscription or be presented in a way other than that specified by "SPAX". The customer, in particular, shall refrain from including anything in his advertising that could lead third parties to erroneously believing the customer belongs to ABC or is a member of the "SPAX" group of companies. Should the customer be uncertain about the manner in which the IPR are to be used he shall contact "SPAX" of his own accord to obtain clarification.

56. The customer shall advertise only original products from “SPAX” with IPR and shall immediately and unsolicitedly prove to “SPAX” by presenting appropriate documents that the subjects of the contract he advertises and markets are original “SPAX” goods. Evidence to the effect that the subjects of the contract are procured from a “SPAX” licensed wholesaler is sufficient for this purpose.
57. The customer shall immediately notify “SPAX” in the event that he becomes aware of third parties declaring or using IPR or of third parties using illustrations which can be possibly confused to be the IPR. In case of violation of IPR by third parties, “SPAX” will freely decide on the measures to be taken to enforce its IPR. The customer is not entitled to take infringement action on his own behalf. If the existence of IPR is contested by third parties in the way of actions for cancellation or cancellation requests, then it remains for “SPAX” to freely decide to defend itself, where appropriate.
58. “SPAX” assures that the IPR at the time of the conclusion of the contract are registered in the appropriate register, in particular in the trademark register, and that “SPAX” is the owner of the usage and application rights in connection with the copyrights for the illustrations. “SPAX” always freely decides whether IPR are maintained or not for the duration of this contract.
59. “SPAX” does not guarantee that any rights of third parties are not infringed through the registration and/or use of the IPR and copyrights. “SPAX” is not aware at the time of conclusion of the contract of any third party rights which conflict with the registration and/or usage of the IPR and copyrights. The customer releases “SPAX” from any claims by third parties which – regardless of the legal grounds – are brought against the customer in connection with the subjects of the contract and IPR, provided intent or gross negligence do not exist.
60. The customer guarantees that an internet platform which he may operate and which he uses to advertise, offer and market the Subjects of the Contract is at all times in compliance with all valid legal provisions of the country of domicile and, if different, with the country from which he places the order on “SPAX”. The liability exemptions for “SPAX” remain valid as set forth in § 59, both in the same manner and in their scope. The customer shall not encroach upon the IPR himself nor support encroachments by third parties. This provision does not apply in countries in which the IPR violate existing law.

### **Place of performance, jurisdiction and applicable law**

61. Insofar as the order acknowledgement does not state otherwise our official business location is the place of performance.

62. The place of jurisdiction is the location of the party being prosecuted in connection with all legal disputes, including documentary evidence proceedings.

63. The contract is governed exclusively by the law of the Federal Republic of Germany. The application of the United Nations Sales Convention of 11th of April 1980 in connection with contracts for the sale of goods (CISG—"Wiener Kaufrecht") is expressly excluded.

### **Severability Clause**

64. The agreements contained in this contract are in conformity with the understanding of both parties. Should a provision be in conflict with existing law, then it is agreed that the clause is to be replaced by a clause coming as close as possible to the sense, spirit and purpose of this contract and fulfilling legal conditions.

65. The German version of the present General Business Terms will be legally binding.

Last revised: March 12, 2010

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