

## General Terms & Conditions of Sale for PLATH EFT GmbH

30.10.2009

### § 1 General; range of application

- (1) These General Terms & Conditions of Sale (GTCS) shall apply to all our business relations with our customers (hereinafter "Buyers"). The GTCS shall apply only if the Buyer is a business operator (Article 14 BGB, German Civil Code), a legal entity under public law, or a specialised agency under public law.
- (2) The GTCS shall apply in particular to contracts for the sale and/or delivery of movable objects and services (hereinafter also "Goods"), irrespective of whether we produce the Goods ourselves or purchase them from our own suppliers (Articles 433 and 651 BGB). In their wording at any given time the GTCS are effective as a framework agreement also for future contracts for the sale and/or delivery of movable objects with the same Buyer. Thus we do not have to refer to them in each individual case.
- (3) Our GTCS shall have exclusive applicability. Buyer's terms & conditions which differ from, are in conflict with or augment our GTCS shall become part of the contract only if and to the extent that we have expressly approved their application. This condition of approval shall apply in every instance, also for example when, having knowledge of the Buyer's GTC, we execute delivery without reservation.
- (4) Individual agreements concluded with the Buyer for particular cases (including supplementary agreements, additions and alterations) shall in every instance take precedence over these GTCS. The content of such agreements shall be determined by a written agreement (e.g. framework agreement) or by our written confirmation.
- (5) Legally relevant declarations and notices which the Buyer has to submit to us after conclusion of a contract (e.g. notices of deadlines or defects, declarations of withdrawal, claims for price reductions) shall be effective only if in written form. The requirement of written form shall also be satisfied by an email (see Article 126 b BGB).
- (6) References to the applicability of statutory provisions shall only have clarifying effect. Even if such clarification is absent, therefore, the provisions of statute law shall apply, except where they are specifically altered or expressly excluded in these GTCS.

### § 2 Conclusion of contracts

- (1) Our offers are without engagement and subject to confirmation. This shall also apply when we have furnished the Buyer with technical documentation (e.g. drawings, plans, calculations, computations, references to standards), other product descriptions or documents - including those in electronic form - to which we reserve property rights and copyright. We also reserve property rights and copyright in respect of estimates, drawings and other documents, which may be made available to third parties only after prior consent on our part.
- (2) An order for goods or services by the Buyer shall be deemed to be a binding offer of contract. Unless otherwise specified in the order, we shall be entitled to accept such offer of contract within 4 weeks after receipt by us.

- (3) Acceptance may be declared to the Buyer either in writing (e.g. by means of confirmation of order) or by delivery of the goods / performance of the service.

### § 3 Delivery period and delay in delivery

- (1) The delivery period shall be agreed on a case-by-case basis or stated by us on acceptance of the order.
- (2) If we are unable to adhere to binding delivery dates for reasons for which we are not responsible (non-availability of the service), we shall inform the Buyer of same without delay and at the same time state the probable new delivery date. If the service is not available within the new delivery period either, we shall be entitled to withdraw from the contract, wholly or in part; we shall, without delay, refund any compensation already paid by the Buyer. Non-availability of a service shall in this context be understood to mean, in particular, the case of failure by our own supplier to deliver on schedule when we have arranged a matching cover transaction. This shall be without prejudice to our statutory rights of withdrawal and termination of contract and to the statutory provisions for the performance of the contract in the case of exclusion of the obligation to render a service (e.g. when it is impossible or unreasonable to render the service and/or the case of supplementary performance). The Buyer's rights of withdrawal and termination under Section 8 of these GTCS shall also remain unaffected.
- (3) If, up to the date of delivery, prices are changed on account of price or wage increases, we shall be entitled to adjust our prices accordingly.
- (4) Whether and when there is a delay in delivery shall be determined subject to the provisions of statute law. A reminder by the Buyer shall be necessary in every case. If we are in default with delivery, the Buyer shall be able to require lump-sum compensation for the loss caused by the delay. The flat-rate damages amount shall be 0.5% of the net price (delivery value) per completed calendar week of delay, but the total shall not exceed 5% of the delivery value of the goods delivered late. We reserve the right to provide evidence that the Buyer has incurred no loss whatever or a substantially lower loss than the lump sum referred to above.

### § 4 Delivery, transfer of risk, acceptance of delivery, delay in acceptance

- (1) Delivery shall be made ex warehouse, which shall also be the place of performance. On the request and at the expense of the Buyer, the Goods will be sent to a different destination (shipment involving use of a carrier). In that case, unless otherwise agreed, we shall ourselves be entitled to decide on the mode of shipment (in particular forwarders, routes and packaging).
- (2) The risk of accidental loss or accidental damage to the goods shall pass to the Buyer not later than the transfer of the goods to the Buyer. In the case of shipment involving use of a carrier, however, the risk of accidental loss and of accidental damage to the goods shall pass, as of the handing over of the goods, to the forwarder, the carrier or other person or establishment designated as responsible for the

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performance of the shipment. If formal acceptance of delivery has been agreed, such acceptance shall mark the point of transfer of risk. The statutory provisions of the law on works and services shall apply to an agreed acceptance in other respects. These provisions shall also apply to handing over and/or acceptance in cases when the Buyer defaults on acceptance.

- (3) If the Buyer defaults on acceptance of delivery or fails to provide the required cooperation or if delivery by us is delayed for other reasons for which the Buyer is responsible, we shall be entitled to demand compensation for the loss resulting therefrom, including additional expenses (e.g. storage costs). In such case we shall require compensation, under Article 642 BGB in conjunction with Article 651 BGB, at a rate of 0.5% of the net price (delivery value) for each completed calendar week of delay, but a total of not more than 5% of the delivery value, starting at the delivery date or - if there is no delivery date - as of notification that the Goods are ready for dispatch. This shall be without prejudice to the provision of evidence of greater loss and to our statutory rights (in particular compensation for additional expenses, reasonable compensation, termination of contract); the lump-sum compensation shall however be deducted from higher monetary claims. The Buyer shall be entitled to furnish evidence that we have incurred no loss whatever, or a substantially lower loss than the lump sum referred to above.

### § 5 Prices and terms of payment

- (1) Except where otherwise agreed in specific cases, the operative prices shall be our current prices as at the time of conclusion of each contract. They shall be ex warehouse, plus statutory VAT.
- (2) In the case of delivery involving a carrier (section 4 (1)), the Buyer shall bear the transport costs ex warehouse and the costs of transport insurance if such is desired by the Buyer. If we do not invoice for the transport costs actually incurred in any individual case, a transports costs flat rate, to be arrived at on a case-by-case basis (excluding transport insurance), shall be agreed with the Buyer. Any customs duty, fees, taxes and other charges by public authorities shall be met by the Buyer.
- (3) Unless otherwise agreed, we shall not accept the return of transport and other packaging, which shall in this case become the property of the Buyer.
- (4) The purchase price shall be due and payable within 30 days of invoice date and delivery or alternatively acceptance of the Goods. In the case of contracts with a delivery value of more than EUR 100,000.00 we shall however be entitled to require a down payment of 30% of the purchase price. The down payment shall be due and payable within 14 days of invoice date.
- (5) As of the expiry of the above payment period the Buyer shall be in default. During the period of default, interest must be paid on the purchase price at the statutory interest rate valid at the time of default. We reserve the right to assert further claims for damages due to default. In respect of business operators this shall be without prejudice to our claim to the commercial default rate (Article 353 HGB, German Commercial Code).

- (6) The Buyer shall be entitled to rights of set-off or retention if and to the extent that his claim is established at law or undisputed. Defects of delivery shall be without prejudice to section 7 (6).

- (7) If it becomes apparent after conclusion of the contract that the financial incapacity of the Buyer has placed our claim to the purchase price in jeopardy (e.g. through application for the opening of insolvency proceedings), we shall, as provided for in statute law, be entitled to refuse to perform the agreed service and - where applicable after setting a deadline - to withdraw from the contract (Article 321 BGB). In the case of contracts for the manufacture of unrepeatable articles (custom-made products) we can declare our withdrawal immediately; statutory regulations for the dispensability of setting deadlines remaining unaffected thereby.

### § 6 Retention of title

- (1) We reserve the right to retain title to the sold goods up to the time of payment in full of all our current and future accounts under the purchase contract and resulting from an ongoing business relationship (secured claims).
- (2) The goods to which title is retained must not be pledged to third parties or assigned as collateral before payment in full of the secured claims. The Buyer shall be required to inform us without delay in writing if and when third parties gain access to goods which are still our property.
- (3) If the Buyer is in breach of contract, in particular if he fails to pay the purchase price, we shall be entitled, subject to the relevant statutory provisions, to withdraw from the contract and/or to require the surrender of the goods to which title has been retained. A demand for surrender of the goods does not automatically involve a declaration of withdrawal; instead it shall be possible for us only to require the surrender of the goods and to reserve the right to withdraw from the contract. If the Buyer fails to pay the purchase price by due date we may assert these rights only if we have first set the Buyer a reasonable deadline to no avail, except when statutory provisions make it possible to dispense with such a deadline.
- (4) The Buyer shall be authorised to continue to sell and/or process the goods to which title is retained, in the course of normal business operations. In this case the following provisions shall apply with supplementary effect.
- (a) The retention of title shall cover the products resulting from the processing, blending or combination of our goods at their full ensuing value, and we shall be deemed to be the manufacturers of such products. If, after the processing, blending or combination with the goods of third parties, the property rights of such third parties continue to be effective, we shall acquire part ownership in proportion to the invoice value of the processed, blended or combined goods. In other respects the resulting product shall be subject to the same provisions as for the goods delivered subject to retention of title.

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- (b) The Buyer shall now assign to us the claims on third parties resulting from the resale of the goods or the said product, in total or in proportion to any share we may have of the title to the goods or product, in accordance with the above paragraph, as security for payment. We herewith accept said assignment. The obligations of the Buyer specified in subsection 2 shall also apply in respect of the assigned claims.
- (c) The Buyer shall continue to be entitled to collect such a claim, in addition to ourselves. We undertake not to collect the debt provided that the Buyer meets his payment obligations towards us, does not default on payment and that no application for the opening of insolvency proceedings is filed and there is no other sign of financial incapacity. If however such is the case, we shall be able to require the Buyer to notify us of the assigned debts and the debtors concerned, to provide all the information necessary for collection, to hand over the relevant documentation and advise the debtors (third parties) of such assignment in our favour.
- (d) If the recoverable value of the securities exceeds our claims by more than 10%, we shall, at the request of the Buyer, release securities of our own choice.

### § 7 Buyer's rights in respect of defects

- (1) The statutory provisions shall govern the rights of the Buyer in the event of defects of quality and title (including incorrect and short delivery and faulty assembly or incorrect assembly instructions), except as otherwise determined below. The special statutory regulations for final delivery of the goods to a consumer (supplier's redress under Articles 478 and 479 BGB) shall in all cases remain unaffected.
- (2) The primary basis for our liability for defects shall be the agreement concluded on the properties and condition of the goods. We manufacture exclusively according to specification (built to print). All product descriptions which form part of the particular contract shall therefore be deemed to be an agreement on the properties of the goods, irrespective of whether the product description originated with the Buyer, the manufacturer or ourselves. Our liability shall therefore not cover any design or construction fault and incorrect instructions from the manufacturer. We accept no liability for finished products on which PLATH EFT GmbH has not conducted a functional test. If PLATH EFT has conducted a functional test, our liability shall be restricted to the range of functions which the device is equipped with.
- (3) No liability shall be accepted for REWORK operations carried out by EFT.
- (4) If no agreement was concluded on the properties of the goods, statutory regulations shall be applied to determine whether a defect is present or not (Article 434 (1) sentences 2 and 3 of the BGB). We shall however accept no liability for public statements made by the manufacturer or other third parties (e.g. in advertising).
- (5) The Buyer's claims in respect of defects shall be conditional on his having met his statutory obligation to inspect and complain promptly (Articles 377 and 381 BGB). If a defect is found on such inspection, or

later, we must be given written notification of same without delay. Notification shall be deemed to be without delay if it is given within two weeks, adherence to this period being determined by the date of dispatch of the notification. Irrespective of this obligation to inspect and complain promptly, the Buyer is required to give written notification of manifest defects (including delivery of wrong goods and short delivery) within two weeks of delivery; here too adherence to the two-week period shall be determined by the date of dispatch of the notification. If the Buyer fails to make the due and required inspection and/or prompt complaint, we shall have no liability for the reported defects.

- (6) If the goods delivered are defective we shall be entitled to decide, as the first step, whether to rectify by removal of the defect (repair) or by delivery of faultless goods (replacement delivery). This shall be without prejudice to our right to reject the selected form of rectification, subject to the conditions prescribed in statute law.
- (7) We shall be entitled to make the required rectification dependent on the Buyer having paid the due purchase price. The Buyer shall however be entitled to retain a part of the purchase price that is commensurate with the scale of the defect.
- (8) The Buyer must give us the time and opportunity necessary to perform the required rectification, and in particular must hand over the goods for testing purposes. In the case of replacement delivery the Buyer must return the defective goods to us subject to the relevant statutory provisions.
- (9) The expenses made necessary by the testing and rectification, in particular the transport, travel, working and material costs, shall be met by us if a defect is in fact present. If however the Buyer's request for the rectification of a defect proves to be unjustified, we shall be entitled to require the Buyer to reimburse us for the costs incurred.
- (10) In urgent cases, e.g. threats to operational safety or the need to avert excessive damage or loss, the Buyer shall be entitled to rectify the defects himself and to require from us reimbursement of the costs that are thereby shown to be objectively necessary. We must be advised of such rectification by the Buyer without delay, and if possible in advance. The Buyer shall have no right to perform the rectification himself if we would have been entitled to reject the rectification under the relevant statutory provisions.
- (11) If the rectification has been unsuccessful or if the reasonable period to be set by the Buyer for the rectification has expired to no avail or can be dispensed with under statutory provisions, the Buyer shall be able to withdraw from the contract or reduce the purchase price. There shall however be no right of withdrawal in the case of an insubstantial defect.
- (12) Rights of the Buyer to claim damages or compensation for fruitless expenditure shall exist solely subject to the provisions of section 8 and shall otherwise be excluded.

### § 8 Other liability

- (1) Except as otherwise provided for in these GTCS and the provisions below, we shall be liable in the event

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of a breach of contractual or non-contractual obligations subject to the pertinent provisions of statute law.

- (2) We shall be liable for payment of damages - irrespective of their legal foundation - in the case of deliberate intent and gross negligence. In the case of minor negligence we shall be liable only
  - a) for damage resulting from injury to life, person or health,
  - b) for damage resulting from the breach of a major contractual obligation (an obligation upon the fulfilment of which the performance of the contract is fundamentally dependent and which one contract partner must as a rule trust - and be able to trust - the other to fulfil); in this case, however, our liability shall be limited to compensation for damage or loss which is predictable and may typically occur.
- (3) The restrictions on liability stated in subsection (2) shall not apply if we conceal a defect with fraudulent intent or if we have assumed a warranty for the properties and condition of the goods. The same shall apply to claims by the Buyer under the German product liability act.
- (4) The Buyer may withdraw from or terminate the contract on ground of a breach of obligation which does not involve a defect only if we are responsible for the breach of obligation. The Buyer shall have no unrestricted right of termination (in particular under Articles 651 and 649 BGB). The statutory requirements and legal consequences shall apply in other respects.

### § 9 Supplier's declaration

Except where otherwise agreed, we do not issue supplier's declarations for the Buyer under (EG) No. 1207/2001 at device level.

This shall apply to all goods, both with and without preferential origin status. This provision shall also cover the issue of certificates of origin.

In cases when a supplier's declaration is requested, we reserve the right to make a check first, so as to be able to assess the time frame and the general possibility of issuing such declaration. In that case the supplier's declaration will be issued at the Buyer's expense.

### § 10 Notifications of product alterations

Unless otherwise agreed, we shall not as a standard procedure inform our customers on ongoing changes on the components market and on the related alterations to products.

### § 11 Statute of limitations

- (1) Contrary to Article 438 (1) (3) BGB, the general period for the time-barring of claims on grounds of defects of quality and title shall be one year as from delivery date. When acceptance of delivery has been agreed, the limitation period shall commence as of acceptance.
- (2) If however the goods in question are a product which, in accordance with its usual application, has been used for a building and its use has caused a condition of defect (building material), the limitation

period shall, under statutory regulations, be 5 years as from delivery date (Article 438 (1) (2) BGB). This shall be without prejudice to special statutory regulations for claims for surrender of the property of third parties (Article 438 (1) (1) BGB), cases of fraudulent intent by the Seller (Article 438 (3) BGB) and for claims under suppliers' recourse for final delivery to a consumer (Article 479 BGB).

- (3) The above limitation periods under purchase law shall also apply to the Buyer's contractual and non-contractual claims for damages on grounds of a defect in the goods, except in cases where the application of the standard statutory period of limitation (Articles 195 and 199 BGB) would in any individual case produce a shorter period of limitation. The periods of limitation laid down in the product liability act shall in any case remain unaffected. In all other respects the Buyer's claims for damages under section 8 of these GTCS shall be governed solely by the statutory periods of limitation.

### § 12 Governing law and court with jurisdiction

- (1) These GTCS shall be governed by the law of the Federal Republic of Germany, to the exclusion of all international and supranational contractual and legal systems, in particular the UN's CISG. The preconditions and effects of section 6 concerning the retention of title, however, shall be subject to the law prevailing at the place where the goods are stored, in cases where the choice of German law as the governing law is impermissible or unenforceable.
- (2) If the Buyer is a merchant as defined in the German Commercial Code or a legal entity under public law or a specialised agency under public law, the sole place of jurisdiction for all disputes - including international disputes - resulting directly or indirectly from the contractual relationship shall be our business location in Norderstedt. We shall however be entitled to start suit at the Buyer's general place of jurisdiction.

**Effective as of October 2010**