

# General Terms and conditions of business of Profinal Handelsgesellschaft mbH

as at: July 2011

## § 1 scope of applicability

(1) These terms and conditions of sale only apply with respect to companies, legal persons under public law or public special funds in the meaning of Article 310 par. 1 of the German Civil Code (*Bürgerliches Gesetzbuch – BGB*). We will only acknowledge terms and conditions of the customer that are opposed to or differ from our terms and conditions of sale if we explicitly agree to their applicability in writing.

(2) The terms and conditions of sale also apply for all future transactions with the customer, provided that they involve legal transactions of a related type.

## § 2 Offer and the conclusion of the contract

If an order constitutes an offer under Article 145 BGB, we may accept it within two weeks. A confirmation of receipt sent by us does not yet constitute acceptance.

## § 3 Provided documentation

We retain the ownership title and copyrights to all documentation provided to the customer in connection with the placement of an order, such as calculations, drawings, etc. Those documents must not be made available to third parties unless we grant the customer our explicit written permission to do so. If we do not accept the customer's offer within the time limit referred to in § 2, those documents must be sent back to us immediately.

## § 4 Prices and payment

(1) Unless agreed otherwise in writing, our prices are ex works, excluding packaging and subject to the addition of VAT in the currently applicable amount. The costs of the packaging shall be separately invoiced.

(2) The purchase price must be paid exclusively into one of the accounts specified overleaf. The deduction of discounts is only permitted with a special written agreement.

(3) Unless otherwise agreed, the purchase price shall be payable within 10 days from delivery. Interest for late payment in the amount of 8% over the current base interest rate per annum will be charged. We reserve the right to assert higher claims for losses due to delay.

(4) Unless a fixed price arrangement has been made, we reserve the right to make reasonable price changes due to changed wage, material or distribution costs for deliveries which are carried out three months or more after the conclusion of the contract.

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## § 5 Setting off and rights of retention

The customer only has the right to carry out a set off if its counterclaims have been established with legally binding effect or have been acknowledged by us in writing. The customer will only have the right to exercise a right of retention if its counterclaim is based on the same contractual relationship and this has been acknowledged in writing or established with legally binding effect.

## § 6 Delivery time

(1) The delivery time specified by us shall begin on the condition that the customer fulfils its obligations correctly and in good time. We reserve the right to raise the objection of non-fulfilment of the contract

(2) If the customer is late in accepting the delivery or culpably breaches other cooperation obligations, we will have the right to demand compensation for the losses we have incurred as a result, including any additional expenses. In the event of rescission due to payment default the compensation will be compounded with 30% of the order value. We reserve the right to assert more far-reaching claims. The customer shall have the right to provide proof that no losses were incurred or losses were incurred in a lower amount.

If the above conditions are fulfilled, the risk of accidental loss or accidental deterioration of the purchased item shall transfer to the customer at the moment from which it is late in accepting it or in making due payments.

(3) We shall be liable in the event of a delay in making delivery not caused by us either intentionally or due to gross negligence for a maximum of 15% of the delivery value as compensation for delay

## § 7 Transfer of risk when orders are shipped

If the goods are shipped to the customer at its request, the risk of accidental loss or accidental deterioration of the goods shall transfer to the customer when the goods are dispatched, and not later than the time when they leave the plant/warehouse. This applies irrespective of whether the goods are shipped from the place of performance and of who bears the transportation costs.

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## § 8 Retention of ownership

(1) We shall retain the ownership title to the goods delivered by us until we have received payment in full of all the receivables resulting from the delivery contract. This shall also apply for all future deliveries, even if we do not always explicitly invoke this provision. If the customer breaches the contract we shall have the right to take back the purchased goods.

(2) The customer must handle the purchased goods with care as long as the ownership title has not transferred to it. Until the ownership title transfers, the customer must promptly notify us in writing if the delivered item has been seized or is exposed to other interventions of third parties. If the third party is unable to reimburse us for the court and out-of-court costs of a lawsuit under Article 771 of the German Code of Civil Procedure (Zivilprozessordnung – ZPO), the customer shall be liable for the financial loss we incur.

(3) The customer shall have the right to resell the goods subject to retention of title in the course of normal business activities. The customer already now assigns to us the receivables of the customer from the resale of the goods subject to retention of title in the amount of the final invoice amount agreed with us (including VAT). This assignment shall apply irrespective of whether the purchased goods have been resold without or after processing. The customer shall remain authorised to collect the claim also after the assignment. Our authorisation to collect the receivables ourselves remains unaffected. However, we will not collect the receivables as long as the customer fulfils its payment obligations from the collected proceeds, is not late in making payment and, in particular, no application has been submitted for insolvency proceedings to be initiated and no suspension of payment has occurred.

(4) The processing or alteration of the purchased goods by the customer shall always occur in our name and on our behalf. In such a situation, the expectant right of the customer with regard to the purchased goods shall continue with regard to the transformed item. If the purchased goods are processed with other items that do not belong to us, we shall acquire a co-ownership title to the new item in the ratio of the objective value of the purchased goods to the other processed items at the time of the processing. The same shall apply in the event the goods are combined with other items. If the combining occurs in such a manner that the customer transfers a pro rata co-ownership title to us and safekeeps for us the solely own or co-owned property that thus arises. In order to secure our receivables against the customer, the customer also assigns to us receivables against a third party that arise due to the goods subject to retention of title being connected to land. We hereby accept that assignment already now.

(5) We undertake to release the security to which we are entitled at the customer's request if its value exceeds the receivables to be secured by more than 20%.

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## § 9 Warranty, complaints and recourse/manufacture recourse

(1) Warranty rights of the customer are subject to the condition that it has properly fulfilled its inspection and complaint obligations under Section 377 of the German Commercial Code (Handelsgesetzbuch – HGB).

(2) Claims for defects shall expire by time limitation 12 months after our goods are delivered to our customer. The above provisions do not apply if the law, i.e. Article 438 par. 1 No. 2 BGB (Construction work and items for construction work), Article 479 par. 1 BGB (Right of recourse) and Article 634a par. 1 BGB (Construction defects), prescribes longer mandatory time limitation periods. Our consent must be obtained before any return shipment of the goods.

(3) If, despite all due care being exercised, the delivered goods have a defect which already existed at the moment when risk was transferred, according to our choice we shall either repair the goods or provide a replacement delivery, provided that a complaint is made within the time limit. We must be provided with the opportunity at all times to render a supplementary performance within a reasonable period of time. Any rights of recourse remain unaffected by the above provision, without limitation.

(4) If the supplementary performance fails, the customer may, without prejudice to any claims for compensation, rescind the contract or reduce the remuneration.

(5) Claims for defects shall not exist in the event of only minor deviations from the agreed quality, if usability is only slightly impaired, with regard to natural wear and tear or in the event of damage which arises after the transfer of risk. If inappropriate repair work or alterations are carried out by the customer or third parties, no claims for defects shall exist for them or any resulting consequences.

(6) Claims of the customer relating to the expenses necessary for the supplementary performance, particularly transport, travel, labour and material costs, are excluded if the expenses increase because the goods delivered by us are subsequently taken to a different location than the customer's establishment.

(7) Rights of recourse of the customer against us shall only exist if the customer has not made any arrangements with its customer that exceed the statutory mandatory claims for defects. Paragraph 6 also applies accordingly to the scope of the right of recourse of the customer against the supplier.

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## § 10 Miscellaneous

(1) The contracts concluded with us and all the legal relationships of the parties are subject to German law, to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

(2) The place of performance and exclusive place of jurisdiction for any disputes that stem from contracts concluded with us is our registered office, unless stated otherwise in the order confirmation.

(3) Should a provision of these General Terms and Conditions of Business contain an unintended gap/omission or be or become ineffective, the effectiveness of the other provisions hereof shall not be affected. Instead of the missing or ineffective provision, an effective provision which corresponds to the economic meaning and purpose of the missing or ineffective provision shall be deemed to have been agreed.