

General Terms and Conditions of Supply for Speidel Tank- u. Behälterbau GmbH (Status 8/09)

§1 Sphere of validity

1.1 Only the General Terms and Conditions of Supply ("AGB") shall apply for all our offers, goods and services.

1.2 The customer's general terms and conditions of business to the contrary shall not become an integral part of the contract even if we do not expressly reject them in the event that supply the customer.

1.3 Our AGB shall apply for on-going business relationships with businesses without having to make an express reference to them again for future offers, goods and services rendered to customers.

§2 Entering into a contract

2.1 Our offers shall be revocable at any time and are only to be understood by the customers as a request to submit offers within the meaning of § 145 of the German Civil Code [BGB], in so far as they have not been designated as fixed offers. A contract shall only materialise with our written order confirmation or when the ordered goods are delivered.

2.2 All information in the leaflets, advertisements etc. are non-binding, even with regard to prices.

2.3 Our written order confirmation shall determine the scope of our goods and services or, in so far as this is not to hand, our offer shall apply. Given this, side agreements and amendments shall be subject to our written confirmation to be legally valid.

§3 Prices, Terms and Conditions of Payment

3.1 All payments are to be paid to us in EURO alone.

3.2 Provided that nothing has been agreed to the contrary, our list prices and freight rates in force on the date of delivery shall apply.

3.3 In so far as there is nothing to the contrary in the order confirmation, the prices shall be "Ex Works" (EXW, Incoterms 2000). Carriage, customs duty, import duties and packing costs shall have to be paid for by the customer as well.

3.4 The statutory value added tax is not included in the prices. As far as applicable, it shall be invoiced on the date of invoice at the statutory rate in force.

3.5 If it is agreed that the price shall be dependent upon the weight of the parts, the final price shall be determined by the weight of the cleared specimen.

3.6 We shall reserve the right in contracts having an agreed delivery date in excess of 4 months to increase prices in accordance with the changes in costs which have occurred. If the increase amounts to more than 5% of the agreed price the customer shall consequently be entitled to a right to dissolve the contract (right to serve notice of termination or withdraw from the contract).

3.7 In so far as we enter into blanket orders and call-off orders we shall reserve the right to adjust the prices of orders not yet placed in the event of considerable fluctuations in the price of materials within the term of confirmed blanket and call-off orders by serving four weeks' notice, if our costs, increase by more than 5 percentage points as a result of increases in the prices of materials, increases in wages or the cost of power supplies. If the price increase amounts to more than 10 percentage points, the customer shall be entitled to withdraw from the contract.

3.8 Provided that the order confirmation does not show anything to the contrary, our invoices shall be payable in full immediately. The subtraction of a prompt payment discount shall be subject to separate written agreement.

3.9 All payments shall first of all be counted towards interest, and last of all towards the oldest debt irrespective of terms and conditions to the contrary the customer may have.

3.10 We shall only accept cheques for the purposes of fulfilment by prior agreement. Interest and costs shall be for the account of the customer.

3.11 The customer may only offset or exercise a right of retention if his accounts are uncontested or if they have been declared final and absolute in a court of law.

3.12 The persistent non-compliance of terms and conditions of payment or circumstances substantiating serious doubts as to the creditworthiness of the customer shall result in all our accounts becoming payable immediately. In addition to this, we shall in this case be entitled to demand payment in advance for deliveries still outstanding as well as to withdraw from the after a reasonable period of time has elapsed without success.

§4 Duty to supply and duty to accept goods and services

4.1 The agreed delivery period shall begin as a matter of principle when the contract is signed, but not however, before all the documents which may have to be supplied by the customer and down payments which may have been agreed and materials have been furnished on time, if they have been agreed, have all been received. Agreed delivery dates shall not be regarded as fixed dates, and part deliveries are allowed. The delivery period shall be regarded as having been complied with if, by the time at which it expires, the item to be delivered has left our works or the customer has been notified that it is ready for dispatch, in so far as the dispatch has been delayed or is impossible without us being to blame.

4.2 If an agreed delivery period is not complied with as a result of us being to blame, the customer shall consequently be entitled after a reasonable subsequent period has expired, to demand default compensation or to withdraw from the contract or in so far as the customer is interested in a part delivery, to withdraw from that part of the contract not yet fulfilled. The default compensation shall be limited to a maximum of 5% of that part of the delivery which has not been carried out in accordance with the contract. Withdrawal shall be ruled out if the customer is himself in default with taking delivery of a consignment. The customer shall reserve the right to prove that a loss sustained by him is higher than the maximum default compensation of 5%. The customer shall only be entitled to additional claims in accordance with § 8 below.

4.3 Deliveries prior to the expiry of the delivery period and reasonable part deliveries as well as reasonable discrepancies from the ordered amounts of up to plus/minus 10% are allowed.

4.4 Force majeure events or other events, for which we are not to blame, making delivery significantly more difficult, delay delivery or make it impossible, shall entitle us, even if they affect our suppliers without them being to blame, to defer delivery by the duration of the hindrance plus a reasonable start-up time or shall enable us to withdraw in part or in full from that part of the contract not yet fulfilled. Strikes, lock-outs or unforeseeable and unavoidable events such as operational disruptions for example, which make it impossible for us to supply on time in spite of us making all reasonable attempts, shall be treated as force majeure. This shall also apply if the aforementioned hindrances occur while we are in default or if these affect one of our suppliers. The customer may call upon us to state within two weeks whether are going to withdraw from the contract or intend to supply within a reasonable subsequent period. If we do not make a statement, the customer may withdraw from that part of the contract which has not been fulfilled. We shall inform the customer straight away if force majeure occurs. We shall have to reduce the adverse impact on the customer to a minimum, if necessary by giving out moulds for the duration of the hindrance.

§5 Packing, Dispatch, The passing of risk and default in taking delivery of the goods

5.1 Unless an agreement has been made to the contrary, we shall choose packing, method and route of dispatch.

5.2 In the absence of an agreement to the contrary, our terms of delivery shall be ex Works.

5.3 Risk shall pass over to the customer when the goods leave our works even in those cases in which we pay for the transport costs. In the event that dispatch is delayed for reasons for which the customer is to blame, risk shall pass over to the Buyer at the same time as he is notified that the goods are ready for dispatch.

5.4 At the written request of the customer the goods shall be insured against risks designated by him at his expense.

§6 Reservation of title

6.1 If the customer is a registered we shall retain title to the sold goods until all our accounts from the business relationship have been fulfilled. In contracts with consumers we shall reserve the title to the delivered thing until the purchase price has been paid in full (Goods subject to reservation of title).

6.2 The goods shall be processed for us as manufacturer within the meaning of § 950 BGB. However, this shall not place us under any obligations. If our goods are processed, connected to or combined with things not belonging to us by the customer, we shall acquire co-ownership of that fraction equal to the proportion of the invoiced value of our goods to the other thing used by the customer at the point in time of processing, connecting or combining. If the goods subject to reservation of title are connected or mixed with the customer's or third party's main thing, the customer shall also consequently assign to us here and now his rights to the new thing. If the customer mixes or combines the goods subject to reservation of title with a main thing belonging to a third party for a fee, he shall hereby assign to us here and now his claims to remuneration against the third party.

6.3 The customer is entitled to resell the goods subject to reservation of title in the course of a proper commercial transaction. If the customer sells these goods without having received the full purchase price in advance concurrently with handing over the purchased goods, he shall consequently have to agree a reservation of title with his buyer in accordance with these terms and conditions. The customer shall assign here and now his claims from this resale as well as the rights from the reservation of title agreed by him with his buyer to us. At our request he shall be obliged to inform the buyer of the assignment and to pass over the information and documents we require to assert our rights against the buyer.

6.4 The customer shall only be authorised to collect accounts created by the resale in spite of the assignment for as long as he fulfils his obligations to us to us properly. If the value of the securities handed over to us should exceed our accounts by a total amount of more than 20 percent, we shall consequently be obliged upon request by the customer to release securities to be chosen by us. If we assert the reservation of title, this shall only constitute withdrawal from the contract if we have expressly stated this in advance in writing, unless the law provides otherwise.

6.5 The customer is to notify us of levies of execution of other third party seizures of goods subject to reservation of title without delay. Intervention costs incurred as a result are to be for the customer's account in all cases, to the extent that they are not paid for by third parties.

§7 Right of revocation and duty to return goods

7.1 If the customer is a consumer, he may revoke the contract in writing (e.g. by sending in a return form, letter, e-mail, fax message), or by returning the thing, within two weeks without having to state any reasons. The period shall begin to run no sooner than the receipt of this instruction. It shall suffice that the revocation or the thing is sent off on time for the period of revocation to have been observed. The revocation is to be addressed to Speidel Tank- und Behälterbau GmbH, Tübinger Str. 14, 72131 Ofterdingen.

7.2 In the event of a valid revocation the performances received by both sides are to be returned, and if necessary, benefits derived are to be handed over. If the consumer is unable to return any or some of the received goods or is only able to return goods which have deteriorated in condition, given this, he shall have to render us compensation for the loss in value. If goods are returned this shall not apply if the deterioration in the condition of the goods is attributable solely to their inspection – as may possibly have occurred in the shop –. Moreover, the consumer may avoid having to pay us compensation for a loss in value of the goods by not using the goods and refraining from all actions which could impair their value.

7.3 When returning goods to us the total order value of which is less than 40 Euro, the consumer shall have to bear the cost of returning the goods if the goods supplied are identical with the goods ordered. Otherwise the returns shall be free for the consumer.

§8 Warranty

8.1 We shall be liable for legal and quality defects in accordance with the following terms and conditions.

8.2 If the customer is presented with samples by us for inspection and production clearance, production clearance must be granted in writing. In this case the samples cleared by the customer shall be authoritative for the quality and model of the products. The reference to technical standards shall serve as performance specifications and are not to be interpreted as a guarantee of condition.

8.3 Comments by us are only to be regarded as the provision of a guarantee of condition if they are expressly designated as such.

8.4 If the customer is registered as a business, he shall be obliged to inspect the delivered goods straight away for manifest defects. Manifest defects are to be notified in writing within 5 days of delivery. If defects are concealed, the defect must be notified straight away upon discovery. If the obligation to inspect the goods and notify defects is breached, the goods shall be regarded as having been accepted and approved. The obligations to inspect the goods and notify defects in force for business people in accordance with the German Commercial Code [HGB] shall not be affected by this.

8.5 All claims under warranty shall become time-barred within the statutory periods of limitation quality, unless an agreement has been made to the contrary. Notwithstanding this, claims asserted by a businessman based on the delivery of movables shall become time-barred twelve months after the passing of risk.

8.6 Provided that there is no arrangement to the contrary in this § 8 our warranty for quality and legal defects shall be limited to subsequent fulfilment. As part of our obligation to render subsequent fulfilment we shall at our choice be entitled to either carry out a repair or supply a replacement. If we fail to fulfil this obligation within a reasonable period of time or if the repair is unsuccessful in spite of repeated attempts, the customer shall be entitled to reduce the purchase price or to withdraw from the contract. The contract cannot be reversed in so far as the defect is nothing more than minor. Over and above this, the contract may only be reversed as a whole in so far as it can be proven that the customer no longer has an interest in the part delivery already supplied. Claims over and above this, in particular claims for the replacement of expenses or compensation claims for damages shall only exist in line with the arrangements in § 9 below. Replaced parts are to be returned to us upon request and at our expense.

8.7 The customer shall have to forward us the defective parts to us for repair or for a replacement to be supplied at our risk, unless given the nature of the consignment, it is not possible to return the goods. We shall bear the transport costs incurred for the purposes of subsequent fulfilment but only from that place to which the purchased goods were delivered in accordance with the contract. And only up to the amount of the purchase price. Accordingly we shall bear the risk of accidental loss or destruction of the defective goods only from the place to which the purchased goods were delivered. If the customer is a businessman, he shall bear the risk of accidental loss and accidental deterioration of the goods during the return

transport. We shall acquire title to replaced delivered items or parts thereof or we shall retain title to them.

8.8 The customer shall have to allow us the necessary time and opportunity to carry out a repair or to supply a replacement. Only in urgent cases in which operational reliability is at risk, or to avert disproportionately major damage or in the event of a delay in rectification of a defect by us shall the customer be entitled, having notified us in advance, to rectify the defect himself or have it rectified by a third party and to demand that we reimburse the necessary costs.

8.9 The warranty obligation shall expire if the customer has modified the delivered goods and the defect is clearly attributable to this modification. Likewise, we shall not be liable for damage incurred as a result of improper use or wanton destruction.

8.10 Wear and tear within normal limits and also slight tool-marks and tolerances caused by production need are not covered by warranty.

8.11 Rights of recourse in accordance with § 478, § 479 BGB shall only exist in so far as the consumer was entitled to recourse and only to the extent allowed by law, but not, on the other hand, for accommodating arrangements not agreed with us, and these assume that the party entitled to recourse has fulfilled his own obligations, in particular he has complied with any notification obligations he may have.

§9 Liability

9.1 We shall be liable for damage, whatever the legal reasons on which it may be based, only,

- a) in so far as we, our senior staff or assistants are charged with intent or gross negligence
- b) in the event of being culpable of loss of life, personal injury and physical harm
- c) in the event of the breach of important contractual duties
- d) in the event of defects which we conceal maliciously or if we have guaranteed the absence of defects
- e) in so far as we are liable under the German Product Liability Act for personal injury of property damage to privately used items.

We shall not be liable for any other compensation claims for damages.

9.2 In the event of a culpable breach of important contractual duties we shall however only be liable for a limited amount to reasonable foreseeable damage typical for the contract. The foreseeable damage typical for the contract shall be set at the contract value of the performance concerned.

§10 Moulds (Tools)

10.1 In so far as we manufacture moulds or have to buy them from a third party to carry out an order from a customer, the customer shall bear the necessary costs for this. The costs for sampling including the costs of the released production sample which is ready for sale, shall likewise be borne by the customer and shall be invoiced to him separately. The customer shall bear the costs for test equipment and processing devices as well as for modifications caused by the customer. The costs of sampling for which we are responsible shall be for our account.

10.2 Provided that nothing has been agreed to the contrary, we are and shall remain the owner of the moulds manufactured by us or by a third party appointed by us and acquired by us. Moulds paid for by the customer in accordance with Section (1) shall only be used for the customer's orders, as long as the customer fulfils his payment and acceptance obligations.

10.3 Our obligation to keep moulds in safekeeping shall expire two years after the last delivery of parts from the mould, having notified the customer in advance.

10.4 Should the customer become the owner of the moulds in accordance with an agreement, title shall pass over to him once he has paid the purchase price for them in full. The hand-over

of the moulds to the customer shall be replaced by keeping them in safekeeping for the customer. Irrespective of the customer's statutory right to have the moulds handed over to him (once they have been paid for) and the useful service life of the moulds, we shall be entitled to be the sole holders of them until the end of the contract. We shall have to mark the moulds as property belonging to another party and at the customer's request we shall have to insure them at his expense.

10.5 Our liability for the customer's own moulds in accordance with Section (4) and/or moulds provided by the customer, shall be limited with regard to keeping them in safekeeping and maintaining them to the care we would apply if they were our property. Costs for servicing and insurance shall be for the customer's account. Our obligations shall lapse once the order has been carried out and if, upon being asked to do so, the customer fails to collect them within a reasonable amount of time. As long as the customer has not fulfilled his contractual obligations in full we shall in each case be entitled to the right of retention to the moulds as well as to a contractual lien on the moulds to secure all uncontested or ascertained accounts.

§11 Furnishing materials

11.1 If materials are furnished by the customer, they are consequently to be supplied at his expense and risk with an appropriate excess volume of at least 5% on time and in perfect condition. We shall not be under any obligation to conduct an inspection upon receipt.

11.2 In the event of non-fulfilment of these preconditions, the delivery period shall be extended accordingly. Except in cases of force majeure, the customer shall bear the additional costs incurred for interruptions in production as well.

§12 Industrial property rights and legal defects

12.1 If we have to supply in accordance with drawings, models, samples or by using parts furnished by the customer, the customer shall consequently be responsible for third party proprietary rights in the destination country of the goods not being breached as a result. The customer shall have to exempt us from third party claims and to render compensation for the losses incurred. If we are forbidden from manufacturing or supplying by a third party claiming that he has a proprietary right, we shall consequently – without reviewing the legal position – be entitled to stop work until the legal position is clarified by the customer and the third party. Should it no longer be reasonable to expect us to continue the contract as a result of the delay, we shall consequently be entitled to withdraw from the contract.

12.2 Drawings and specimens handed over to us which do not result in an order being placed with us shall be returned upon request. Otherwise we shall be entitled to destroy them three months after submitting an offer. This obligation shall apply as appropriate for the customer. The party entitled to destroy the drawings and specimens shall have to notify the other party to the contract in good time in advance of his intention to destroy the drawings and specimens.

12.3 We shall be entitled to the copyrights and industrial property rights if there are any, in particular we shall be entitled to all rights of use and sale to the models, moulds and devices, drafts and drawings designed by us or by third parties on our behalf.

12.4 Should there be other legal defects, § 8 shall apply for them as appropriate.

§13 Place of fulfilment, Place of jurisdiction, Applicable law, Miscellaneous

13.1 The place of fulfilment for all claims arising from the business relationship is Ofterdingen, provided that the customer is a registered business.

13.2 The place of jurisdiction for all claims from the business relationship including those based on cheques is the court whose jurisdiction covers our principal place of business, provided that the customer is a registered business. We shall also be entitled to take

legal action against the customer at the courts having jurisdiction where he is based.

13.3 Only the law of the Federal Republic of Germany shall apply for these T&Cs and the entire legal relationship between us and the customer. The UN law on sales (CISG) as well as international private law shall not apply.

13.4 Should individual provisions be or become invalid, the remaining terms and conditions shall not be affected by this as a result. The arrangement which is partially or completely invalid is to be replaced by an arrangement the economic success of which comes as close as possible to that of the invalid arrangement.

13.5 Amendments to these T&Cs must be made in writing. The requirement for written form may likewise only be eliminated by mutual consent in writing.