

# **Terms and Conditions of Sale and Delivery of AMC AG**

## **1. General**

Unless otherwise agreed, the following conditions apply to all our sales to commercial customers.

The customer's General Conditions of Purchasing are not recognised. Neither will they apply if their validity is not explicitly objected to in individual cases.

## **2. Quotes, Conclusion of Contracts**

Our quotes remain subject to alteration at all times.

Orders will be accepted either by their confirmation or performance.

## **3. Product Descriptions**

Illustrations, drawings, dimensions and similar in catalogues, prospectuses, price-lists and other printed matter are non-binding. Under no circumstances do product descriptions guarantee the presence of certain characteristics. The acceptance of guarantees applies solely if explicitly stated.

## **4. Prices, Payment, Counter-Claims**

Prices are ex-works (Incoterms 2010) from the registered offices of the vendor or directly from the distribution centre or registered offices of the upstream supplier plus any additional value added tax, packing, loading, unloading, installation and insurance unless otherwise agreed to on an individual basis. If, between the conclusion of the contract and performance, there are price-increases in the ancillary costs of an order, such as for transport, insurance, customs duty and taxes, these will be charged to the purchaser if the price-increases have occurred before arrival of the goods at their destination. This provision will not apply if less than four months have passed between the time the order is placed and delivery/performance. If price-increases exceed 10%, the purchaser will be entitled to cancel the contract in respect of the article affected. Right of cancellation must be exercised within one week of knowledge of the price-increase.

Our invoices are due for payment without deduction into our bank account on the date due shown on the invoice.

In cases of arrears, we will be entitled to charge interest of eight percentage points above the base lending rate. We may also claim damages over and above this amount. If the purchaser is a merchant, we reserve the right to charge interest after the due date.

The purchaser will only be entitled to offset invoice amounts if its counter-claims have been established in law, are undisputed or have been recognised by us. The purchaser will also be entitled to exercise right of retention if its counter-claims are based on the same contractual relationship.

## **5. Delivery, Right to Self-Supply, Acts of God, Transfer of Risk**

Delivery dates communicated between the parties are approximate dates unless a fixed date is expressly agreed on. "Approximate" means a delivery period of X days beginning with the confirmation of the order but not before we have received from the purchaser documentation to be obtained or not before receipt of any agreed deposit.

If and when reasonable, we will be entitled to make partial deliveries.

We for our part will at all times make all efforts to deliver the precise quantities ordered. However, our quotes include surplus or shortfall orders of up to 10% customary in commerce; these will be taken into account when the invoice is issued.

We reserve the right to correct and timely self-supply.

Government measures, insurgency, strikes, lock-outs, fire, mechanical breakdowns, material and energy supply-bottlenecks, transport problems and other reasons over which we have no control and which delay normal production or shipment will be deemed to be "Acts of God" and will entitle us to postpone the delivery date as appropriate. We will be obliged to immediately inform the purchaser of circumstances of this nature as soon as we become aware them. If it is unreasonable for a party to supply a delayed service due to the aforementioned events, this party will be entitled to cancel the contract.

Goods will be shipped ex-works (see No. 4). If we agree to send a shipment in isolated cases, this will be at the risk of the purchaser and in a transport mode selected at our discretion, including if we pay for the transport charges.

## **6. Guarantee / Liability for Defects**

The purchaser is required to inspect the goods personally in order to ensure that they are suitable for the intended purpose.

The guarantee period is one year following delivery. In the case of delivery recourse in accordance with Sections 78 and 479 of the German Civil Code (BGB), the expiry periods will remain unaffected by this provision. This will not restrict damage claims or claims for the reimbursement of expenses due to gross negligence, criminal intent or the breach of essential contractual obligations (see the provisions in No. 7 "General Liability"). Neither will it affect damages claims due to death, physical injury or harm to health or under the terms of German product liability legislation.

On receipt of the goods the purchaser is required to both inspect them immediately and immediately report any defects found. "Immediately" is defined here as eight days unless special circumstances mean that another period seems appropriate. If there is a suspicion of not only a negligible defect in respect of delivered products, the purchaser will be required to inform the vendor of this suspicion immediately, including if further inspection has to be carried out in order to verify the defect. A culpable breach of this requirement will lead to the purchaser being required to pay compensation.

In cases where goods are defective and where notification of defects is made in the correct form and in a timely manner, the purchaser will at our option be entitled to derectification or replacement delivery.

If the delivery charges are increased due to the goods being sent abroad by the purchaser, this price-difference will be at the purchaser's expense. Any dismantling and re-installation expenses will be at the purchaser's expense. If correction and / or replacement fails repeatedly, the purchaser will be entitled to reduce the purchase-price appropriately or cancel the contract.

## **7. General Liability**

Damages claims of all kinds against us and our legal representatives and assistants will not be recognised except in cases of intent, gross negligence or the breach of an essential contractual obligation.

An essential contractual obligation is defined here as every obligation whose fulfilment makes the performance of this contract possible at all and on whose compliance the purchaser may regularly rely.

However, liability for gross negligence will be limited to compensation of typically foreseeable damage.

The aforementioned liability limitations and exclusions do not apply to liability within the meaning of the German Product Liability Act or to cases of injury to human life, physical injury or harm to human health.

The customer's claims for compensation in accordance with Section 284 of the German Civil Code (BGB) are excluded if claims for damages are not recognised instead of performance carried out under the terms of the aforementioned provisions.

## **8. Reservation of Title**

We reserve the right to ownership of the products delivered until all claims arising from the business relationship with the purchaser have been settled.

The reserved goods by the purchaser will be processed or treated at all times on our behalf without any resulting obligations being placed upon us. We will be entitled to ownership of the new items in their respective processed or treated state. If our reserved goods are processed, treated, mixed, combined with or connected to products not belonging to us, we will be entitled to joint ownership of the new item to the value of the invoice for the reserved goods as a percentage of the value of the invoice for the other products.

The purchaser may sell those reserved goods in the normal course of business which are the sole of joint property of the vendor; it may not pledge them, transfer of ownership of them as security or assign them as security. The purchaser assigns to us now, immediately and in advance all claims to which it is entitled and which arise from the resale of the reserve goods or to the products that result due to processing, treatment, mixing, combination or connection. This will also apply if the products are sold at a lump-sum price together with other products not belonging to the vendor. Should by reason of legislative provision a third party have gained sole or joint ownership rights to the products resulting from processing, treatment, mixing, combination or connection, the purchaser will also assign to us now, immediately and in advance its resulting claims against the third party. Assignments for the purposes of this paragraph will at all times only be up to the value of the invoice for the reserved goods. The purchaser is entitled to collect the assigned claims until this right is withdrawn; this right may be withdrawn at any time.

We accept now and immediately the aforementioned assignments by the purchaser as provided in this Number.

In accordance with the aforementioned provisions, we will, at our option, undertake to release the sureties due to us at the purchaser's request provided their value exceeds by more than 10% the value of the accounts receivable to be secured.

If the assistance of the purchaser is required to make reservation of title legally valid, for example in registrations required in accordance with the laws of the purchasing country, the purchaser will be required to take such action.

If the vendor is in arrears of payment, we may forbid it from having control of the reserved goods, either wholly or, at our option, partially, e.g. only for the purposes of sale or further processing.

If the purchaser fulfils the requirements for being obliged to file an application for insolvency, the purchaser will, without any corresponding request being required, refrain from having or gaining control of any kind whatsoever of the reserved goods. The purchaser is obliged to inform us immediately of the levels of reserved goods. In such cases, we will also be entitled to cancel the contract and request that the reserved goods be released. If the reserved goods have been processed, treated, mixed, combined or joined to other products, we will be entitled to request their release to a trustee; the purchaser will be required to inform us of the company names, names, addresses and shares of joint ownership of all joint owners of the reserved goods. The same applies correspondingly to claims which have been assigned to us in accordance with the above paragraphs; in addition, the purchaser will, without being requested to do so, be required to send us copies of the names and addresses of all debtors and documentary evidence of the outstanding claims against them.

## **9. Place of Jurisdiction and Mediation Agreement, Choice of Law**

The place of fulfilment for payment and delivery is Kaltenkirchen if the purchaser is a merchant. This also applies to guarantee claims.

The exclusive place of jurisdiction for all disputes with merchants, legal entities in public law, special public funds and persons having no general place of jurisdiction in Germany is Kaltenkirchen. Alternatively, however, we will also be entitled to institute legal action against the purchaser at the location of its registered offices. Alternatively, each party will be entitled to call on the arbitration tribunal of the Hamburg Chamber of Commerce instead of the ordinary courts with the consequence that this would be convened solely in order to decide on the dispute. The location of arbitration and the proceedings to be held in this case will be Hamburg.

German law applies to the exclusion of the provisions of the UN Convention on the International Sale of Goods.

**(As per the 2012/01)**