

## **Preliminary note**

The following general terms and conditions of sale and purchase apply to all companies of the Sietzy Group, i.e. for the Westeisen Werner Sietzy GmbH, the Stahl Becker GmbH, the Allmeson GmbH as well as the Sietzy Holding GmbH.

## **General Conditions of Sale**

Note: This is a translation of the German version. In cases of uncertainty or conflict, the German version shall prevail.

### **I. Application, Offers**

1. These General Conditions of Sale (Conditions) shall apply to all present and future contracts with commercial buyers, with public legal entities as well as public trusts in regard to deliveries and other services, including contracts relating to the supply and manufacture of non fungible goods. In case of direct sales ("Streckengeschäfte"), the producer's conditions as laid down in its price list shall apply in addition to these conditions. The Buyer's purchase conditions shall not be binding even if we do not expressly object to them again after their receipt.
2. Our offers are not binding to us. Oral agreements, promises, assurances and guaranties made or given by our sales staff shall not be binding unless confirmed by us in writing, this demand being met also in cases of telefax and e-mail transmission.
3. Any trade terms shall, in cases of doubt, be interpreted according to the Incoterms as amended from time to time.

### **II. Prices**

1. Unless otherwise agreed to, only such prices and terms shall apply as contained in our price lists effective at the time when the contract is concluded. The merchandise will be invoiced "gross for net".
2. In case of direct sales (Streckengeschäfte), we shall be entitled to increase the agreed price, if and in so far as our supplier has increased the price earlier to the delivery of goods. This shall only apply if there was a period of more than three months between the conclusion of the contract and the delivery. In this case, the buyer may withdraw from the contract. The withdrawal must be communicated to us immediately after the reception of our price increase.

### **III. Payment and Set-Off**

1. Unless otherwise agreed or stated in our invoices, payment shall be made without cash discounts immediately so that we can dispose of the sum on the due date. Any payment transfer costs shall be borne by the Buyer. The Buyer may retain or set off any counterclaims only in so far as his claims are undisputed or have become legally binding.
2. Should the Buyer default in payment, he will be liable to pay interest at 8 %points above the basic interest rate, unless higher rates have been agreed upon. We reserve the right to claim additional damages resulting from late payment.
3. The Buyer will be in default of payment at the latest 10 days after payment has been become due regardless of whether we have sent a reminder.
4. Should it become evident after the conclusion of the contract, that payment is jeopardised by the Buyer's lack in financial means, or should the Buyer be in default with a considerable portion of the amount due or should other circumstances arise which show a material deterioration in the Buyer's financial position after the conclusion of the contract, we shall be authorised to make use of rights

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under § 321 BGB (German Civil Code) and to make due any and all of our non statute-barred accounts receivable resulting from the same legal relationship.

5. Any agreed upon cash discount always relates to the invoiced value excluding freight and will only be granted if and in so far as the Buyer has completely paid all payables due at the time of the discount. Unless otherwise agreed to discount periods shall begin with the date of the invoice.

#### IV. Delivery Times

1. Our commitment to deliver is subject to our correct and timely self-delivery unless we are responsible for the deficient or late self-delivery.

2. Any confirmation as to delivery times shall only be approximate. Delivery times shall commence with the date of our order confirmation and are subject to the timely clarification of any details of the order as well as of the fulfilment of any of the Buyer's obligations, e.g. to produce official certifications, to provide letters of credit and payment guarantees or to pay agreed instalments.

3. Any agreed delivery time shall be considered to be met if and in so far the goods have left the works or our warehouse at such time or date. If and in so far the goods fail to be despatched at the agreed time for reasons not attributable to us, the agreed delivery time shall be considered to have been met at the day on which the goods are notified to be ready for dispatch.

4. If the delivery is delayed by our fault, the Buyer, after setting a reasonable grace period, may withdraw from the contract if and in so far as the goods have not been delivered by this date. Damage claims for delay and non-performance may be made in accordance with clause XI of these Conditions.

#### V. Retention of Title

1. All goods delivered to the Buyer shall remain our property (Reserved Property) until all of the Buyer's accounts resulting from the business relationship with him, in particular any account balances have been settled. This condition shall apply to any future as well as any conditional claims including accepted notes and such cases where the Buyer will affect payments on specifically designated claims. As soon as the Buyer has settled his accounts with us in full, he shall obtain title to those goods which were delivered to him before such payment was effected.

2. With regard to processing or manufacturing of the Reserved Property, we shall be deemed to be manufacturer within the meaning of § 950 BGB (German Civil Code) without committing us in any way. The processed or manufactured goods shall be regarded as Reserved Property within the meaning of clause V/1 of these Conditions. If the Buyer manufactures, combines or mixes the Reserved Property with other goods we shall obtain co-ownership in the new goods in proportion to the invoiced price of the Reserved Property to the invoiced price of the other goods. If, by such combining or mixing, our ownership expires, the Buyer herewith transfers to us any rights which the Buyer will have in the new stock or goods in proportion to the invoiced price of the Reserved Property, and he will keep them in safe custody free of charge. Our co-ownership rights shall be regarded as Reserved Property within the meaning of clause V/1 of these Conditions.

3. The Buyer may resell the Reserved Property only within the normal course of his business in accordance with his normal business terms and provided he is not in default of payment and provided also that any rights resulting from such resale will be transferred to us in accordance with clause V/4 through V/6 of these Conditions. The Buyer shall not be entitled to dispose of the Reserved Property in any other way.

4. The Buyer hereby assigns to us any claims resulting from the resale of the Reserved Property. Such claims shall serve as our security to the same extent as the Reserved Property itself. If the Reserved Property is resold by the Buyer together with other goods not purchased from us, then any receivables resulting from such resale shall be assigned to us in the ratio of the invoiced value of the other goods sold by the Buyer. In the case of resale of goods in which we have co-ownership

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rights according to clause V/2 of these Conditions, the assignment shall be limited to the part which corresponds to our co-ownership rights.

5. The Buyer shall be entitled to collect any receivables resulting from the resale of the Reserved Property. This right shall expire if withdrawn by us, at the latest if the Buyer defaults in payment; fails to honour a bill of exchange; or files for bankruptcy. We shall exert our right of revocation only if and in so far as it becomes evident after the conclusion of the contract that payment resulting from this contract or from other contracts is jeopardised by the lack of Buyer's ability to pay. The Buyer shall - upon our request - immediately inform his customers of such assignment and to forward to us any information and documents necessary for collection.

6. The Buyer shall immediately inform us of any seizure or any other attachment of the Reserved Property by a third party. He shall bear any costs necessary to suspend such seizure or attachment or removal of the Reserved Property, if and in so far as such costs are not borne by a third party.

7. Should the Buyer default in payment or should he fail to honour a draft we shall be entitled to take back the Reserved Property, to enter, for this purpose, the Buyer's premises and to sell the Retained Property best possible by crediting the proceeds to the purchase price. The same shall apply should, after the conclusion of the contract, it become evident that payment resulting from this contract or from other contracts is jeopardised by the Buyer's lack of ability to pay. If we take back the Reserved Property, this shall not be regarded as withdrawal from the contract. The statutory regulations of the Insolvenzordnung (= German Insolvency Act) shall remain unaffected.

8. Should the total invoiced value of our collateral exceed the amount of the secured receivables including additional claims for interest, costs etc. by more than 50 %, we shall - upon the Buyer's request - release pro tanto collateral at our discretion.

## VI. Grades, Sizes and Weight

1. Grades, sizes and classification of the goods shall be determined in accordance with the agreed standards or, in absence of such an agreement, with the DIN and EN-standards effective at the time of the conclusion of the contract, or in absence of such standards with trade practice and usage. Any reference to such standards and to similar rules, to works certificates and to similar inspection documents as well as reference to grades, classification, sizes, weights or usage of the goods shall not be regarded as warranty of fitness for a special purpose nor as a guarantee. The same shall pertain to declarations of conformity and to any related marks such as CE and GS.

2. The weight of the goods shall be determined on our or our suppliers' scales and shall be evidenced by the presentation of the pertinent weight check. Where provided by law, the weight may be determined without weighing in accordance with the standards. We may calculate the weight without weighing on the basis of the applicable standards ("theoretical weight") plus 2 ½ pct ("commercial weight"). Any indications given in the delivery notes as to the number of pieces, bundles etc. are not binding, if and in so far as the goods are invoiced by weight. Where, in accordance with trade usage, the goods are not weighed piece by piece, the total weight of the delivery shall prevail. Any difference with regard to the calculated weight of the single pieces shall be proportionally allocated to them.

## VII. Testing and Inspection

1. Where testing and inspection of the goods has been agreed upon, the goods must be inspected in the mill or in our warehouse immediately after the Buyer has been informed that the goods are ready for dispatch. The Buyer shall bear his personal inspection costs, whereas the costs of inspection will be invoiced to him in accordance with our price list.

2. Should, through no fault of ours, an agreed upon inspection of the goods fail or be delayed or be incomplete, we shall be authorised to dispatch the goods without prior inspection or to store them at the Buyer's expense and risk and to invoice the goods to him.

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## VIII. Dispatch, Passing of Risk, Packaging, Partial Delivery

1. We shall be entitled to choose the route and mode of dispatch as well as the forwarding agent and the carrier.
2. The Buyer shall immediately request delivery of those goods which have been notified to him as ready for dispatch. Otherwise we are entitled, upon reminder, to ship such goods at the Buyer's cost and risk or to store them at our discretion and to invoice them to the Buyer.
3. Can, by reasons not attributable to us, the goods not be shipped or will it become substantially difficult to ship the goods via the designated route or to the designated place within the designated time, we reserve the right to ship them via a different route or to a different place. Any additional costs will be borne by the Buyer. In such cases we will ask the Buyer for his prior comments.
4. In all transactions, including freight prepaid and freight-free deliveries, the risk of loss or damage to the goods shall pass to the Buyer at the time where we hand them over to the forwarding agent or to the carrier, at the latest with their departure from our warehouse. We will buy insurance only if requested to by the Buyer and at his cost. The Buyer shall unload the goods at his cost.
5. The goods will be delivered unpacked and not be protected against rust. Only where so provided by trade usage will the goods be packed. Any package, protection and/or transport device will be supplied according to our experience and at the Buyer's cost. We will take back such devices only at our warehouse. We will not bear any costs for their re-transport or disposal.
6. We shall be entitled to make partial deliveries at reasonable quantities. We may also exceed or reduce the agreed quantities as appropriate. Where quantities are indicated as "circa", we may exceed or fall below the agreed quantity up to 10 pct.

## IX. Callable and Continuous Deliveries

1. Where the contract provides for continuous deliveries, the Buyer shall divide the quantities and grades of the goods into approximately equal monthly shipments. Otherwise we shall be entitled to specify them at our own fair and just discretion.
2. Where the single calls for delivery exceed the total contractual quantity, we shall be entitled, yet not committed, to deliver the surplus quantity and invoice it at the prices applicable at the time of the call or the delivery.

## X. Warranty Provisions

1. The Buyer shall immediately notify us in writing of any defects of the goods, at the latest seven days after their delivery. Defects which, even upon careful inspection, cannot be discovered within this period must be notified to us in writing immediately upon their discovery, at the latest before the elapse of any agreed or statutory warranty period. In such cases the Buyer must suspend any processing or manufacturing of the goods.
2. If and in so far the Buyer's claim for defects is justified and has been made in time, we may, upon our discretion, remedy the defect or deliver non-defective goods ("substitution"). Should we fail or decline the substitution, the Buyer may, upon the elapse of an adequate additional period of time set to us, withdraw from the contract or reduce the purchase price. In cases where the defect is only minor or where the goods have already been resold, processed or transformed, he may only reduce the purchase price.
3. We will reimburse the Buyer for his expenditures in connection with the substitution only in so far as such expenditures are reasonable and proportional to the purchase price of the goods, in no case more than 150 pct of the purchase price. We will bear any further expenses such as for the mantling and dismantling of the defective goods only in accordance with the rules of Section XI of these Conditions.
4. If and in so far the goods are subject to contractually agreed testing and inspection by the Buyer, such testing and inspection shall bar any claims for such defects which might have been

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determined by the agreed type of testing and inspection. Has the Buyer, by his own negligence, not learned of the defect, then he may claim only such defects which we have knowingly not disclosed to him or which are subject to a guarantee.

5. If the Buyer fails to immediately give to us the opportunity to inspect the defect, especially if he fails - upon our request - to immediately make the goods or samples hereof available to us, he will lose all of his warranty rights.

6. No warranty shall be given to goods sold as declassified material with regard to such defects either specified in the contract or to those normally to be expected. Goods classified as "Ila-Ware" ("secondaries") are not subject to any warranty.

7. Our further liability is subject to Section XI. Any of the Buyer's rights of recourse according to §§ 478, 479 BGB (German Civil Code) shall remain unaffected.

## XI. Restriction of Liability and Limitation Periods

1. Our liability for breach of contractual or extra-contractual obligations, in particular for non-performed or deferred deliveries, for breach of duties prior to the contract ("Verschulden bei Vertragsanbahnung") as well as for tortious acts - including our responsibility for our managerial staff and any other person employed in performing our obligations - shall be restricted to damages caused by our wrongful intent or by our gross negligence and shall in no case exceed the foreseeable losses and damages characteristic for the type of contract in question.

2. The aforesaid restriction shall not apply to such cases where we breach our fundamental contractual obligations and where such a breach of contract will endanger the contractual purpose; it shall neither pertain to damages to life, to the body or to health caused by our fault nor to any cases where we have guaranteed certain characteristics of the goods. Nor shall such clause affect our statutory liability laid down in the Product Liability Act (Produkthaftungsgesetz) of 15/12/89. Any statutory rules regarding the burden of proof shall remain unaffected by the aforesaid.

3. Unless otherwise agreed to any contractual claims which the Buyer is entitled to in connection with the delivery of the goods shall fall under the statute of limitations within a period of one year after the goods have been delivered to the Buyer. This limitation shall also apply to such goods which, according to their normal purpose of use, have been used for constructional works related to real estate property and which have caused damage within this construction unless this purpose of use has been agreed upon in writing. This restriction shall not apply to our liability resulting from breaches of contract caused by our wrongful intent or by our gross negligence; neither to damages to life, to the body and to health caused by our fault nor to any recourse claims under §§ 478, 479 of the German BGB.

## XII. Place of Performance / Jurisdiction / Applicable Law

1. The place of performance for our deliveries shall be the supplying work in cases of ex-work deliveries, in all other cases it shall be our warehouse. The place of jurisdiction shall be at our seat or - at our discretion - at the Buyer's seat.

2. All legal relationships between us and the Buyer shall be governed by the non-standardised laws of the Federal Republic of Germany supplementing these Conditions, especially the German BGB/HGB, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (UNCITRAL).

## XIII. Applicable Version

In cases of doubt, the German version of these General Conditions of Sale shall apply.

## General Conditions of Purchase

Note: This is a translation of the German version. In cases of uncertainty or conflict, the German version shall prevail.

### I. Application

1. These Purchase Conditions (Conditions) shall apply to all our present and future orders for merchandise and to the performance of such orders. Seller's conditions diverging from these Conditions will not be acknowledged unless otherwise stipulated within these Conditions or otherwise agreed in the contract with the Seller. Should we accept the merchandise not expressly objecting these Conditions, the Seller may in no case assume our consent with his conditions.
2. Any oral agreements made by our employees shall become binding on us only if and in so far as we confirm them in writing. This demand being met also in cases of telefax and e-mail transmission.
3. Any offer made by Seller will be free of charge and not binding to us.
4. Any trade terms shall, in cases of doubt, be interpreted according to the Incoterms as amended from time to time

### II. Prices

1. The contract price shall be regarded as a fixed price.
2. In case of "free house" deliveries, deliveries "free place of destination" and other "free"-deliveries, the price shall include the costs for freight and packaging. In case of "unfree" delivery, we shall bear the lowest possible freight rates only, unless a special kind of delivery has been requested by us.

### III. Payment

1. Unless otherwise agreed the following terms of payment shall apply: Payment shall be made either within 14 days with 3 p.c. discount or within 30 days without discount. Should the Seller's conditions for payment be more favourable, they shall prevail.
2. Payment and discount periods shall begin with the receipt of the invoice but not before the receipt of the merchandise. In case of services, such periods shall begin only after the transaction has been approved by us. If the delivery includes documentation (e.g. test certificates) or similar written material, such periods shall begin only after receipt of the same as agreed upon in the contract.
3. Payment shall be made by cheque or by bank remittance. Payment is considered to have been made in time if the cheque has been mailed on the due date or the bank has been instructed to make the remittance on the due date.
4. We will be liable for interest only if and so far as we are in arrears for payments, not at their mere maturity date. The interest rate will then be 5 %points above the Basic Interest Rate. We are, in any case, entitled to establish a lower rate than claimed by the Seller.
5. We shall be entitled to all statutory rights as to the to set-off and retention of our claims against the Seller's.

### IV. Delivery Times / Late Delivery

1. All contractual terms and dates of delivery shall be binding to the Seller. The Seller shall immediately inform us in case of imminent delays and submit to us adequate proposals to remedy the consequences of such delays.
2. Unless otherwise agreed in writing, any contractual terms and dates of delivery shall be considered to be met only if and in so far as the merchandise has been handed over to us at such dates.

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3. If and in so far as the Seller defaults in delivery, we shall be entitled to our statutory rights. In particular, we shall have the right to claim damages for non-performance if and in so far as the Seller fails to effect delivery after a reasonable grace period set to him has elapsed. Our right to request delivery shall be excluded only if the Seller has compensated us for our damages.

4. The Seller may claim relief for his default by reason of lack of any documents to be submitted by us only in such cases where we have, upon the Seller's reminder, failed to deliver such documents to him.

#### V. Retention of Title

1. The Seller's terms covering his retention of title shall be valid subject to the condition that title in the merchandise shall pass to us on the date of payment for such goods. Consequently, the extended forms of the so-called current account retention (Kontokorrentvorbehalt) shall not apply.

2. The Seller may claim return of the merchandise on the basis of the retention clause only if he has previously withdrawn from the contract.

#### VI. Performance of Deliveries and Passing of Risks

1. The Seller shall bear the risks of accidental loss and accidental deterioration of the merchandise until it has been handed over to us at its place of delivery. This provision shall also apply in cases of "free delivery" (franco domicile)

2. We will not accept partial deliveries unless we have given our prior express consent to them.

3. Excess or short deliveries will be accepted only in accordance with current trade practise.

4. Unless otherwise agreed in writing, the Seller shall bear the costs of packing. Should we, in a given case, agree to bear such costs, the Seller will charge us with the lowest possible costs only. Any obligations to take back packing material shall be governed by the Packaging Decree (Verpackungsverordnung) of 21.08.1998, as amended from time to time.

#### VII. Declarations of Origin

Where the Seller makes a declaration in regard to the preferential or non-preferential origin of the sold merchandise, the following terms shall apply:

1. The Seller will allow verification through customs authorities and submit all necessary information as well as any required certification.

2. The Seller shall compensate us for any damages and losses incurred to us, if and in so far as the competent authorities, due to any deficient certification or impossibility to verify, fail to acknowledge the declared origin, unless he proves that he is not responsible for such consequences. This warranty occurs only, if the seller is responsible for such consequences or if he made assurances in regard of a specific origin of the sold merchandise.

#### VIII. Warranty Provisions and Statute of Limitations

1. The Seller shall deliver the merchandise free of any material and legal defects. He will certify in particular that his deliveries and his services comply with the state of the art and with any contractual requirements and standards.

2. We will examine the quality and quantity of the merchandise upon its receipt to the extent both reasonable and technically feasible for us. Any notice of a defect will be deemed to be in time if it reaches the Seller within eight working days by letter, telefax, e-mail or by telephone. Periods for such notices shall not start before we – or in case of direct sales (Streckengeschäfte) our buyers – have detected or should have detected the defect.

3. In the event that the merchandise shows a defect, we may exercise our statutory rights. If the Seller tries to repair the merchandise, such remedy is considered to have failed after the first

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unsuccessful attempt. We shall have the right to withdraw from the contract also in such cases where a breach of contract is not considered to be material.

4. Where the merchandise was already defective at the time the risk passed to us, we may claim from the Seller also those expenditures in connection with such defect which we must pay to our customer.

5. Any claims arising from defects of the merchandise will be governed by the statutory limitation periods. Such periods will begin with the timely notification of the defect in accordance with the provisions of No. 2 of this clause. The Seller's warranty for the merchandise will elapse at the latest ten years after its delivery. Such time limit will not apply in those cases where our claims rely on facts which the Seller knew or should have known and which he did not reveal to us.

6. The Seller hereby assigns to us - on account of performance – the benefit of any claims against his supplier arising from the delivery of deficient merchandise or of such merchandise not conforming with the guaranteed characteristics. He will supply us with any documents necessary to enforce such claims.

#### IX. Place of Performance, Jurisdiction, Applicable Law

1. Unless otherwise agreed to, our warehouse shall be the place of performance for the delivery.

2. Our principal office shall be the place of jurisdiction. We may, however, sue the Seller at his place of jurisdiction or at the court which is competent for our branch office with which the contract in question has been concluded.

3. All legal relationships between ourselves and the Seller shall be governed by the laws of the Federal Republic of Germany supplementing these Purchase Conditions, including the provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (UNCITRAL).

#### X. Applicable Version

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Heusenstamm, 2008-05-08

General Management  
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Westeisen GmbH und Sietzy Holding GmbH