

§ 1 Validity of trade terms

All deliveries, services and offers by TGK are provided or made exclusively in accordance with these terms and conditions of trade. Consequently these terms also apply to all future business relations without having to be expressly re-agreed. These conditions are deemed to have been accepted as soon as the goods or services have been received. Counter-confirmations made by the buyer with reference to his own terms and conditions of trade and purchase shall not be accepted.

§ 2 Offer and conclusion of contract

(1) Offers made by TGK are subject to confirmation and are not binding. Acceptances and orders do not become legally binding until they have been confirmed either in writing or by fax by TGK, unless the order has been carried out within a time period of 14 days.

(2) Drawings, illustrations, measurements, weights or other performance data only become binding if they have been agreed in writing.

(3) Employees of the TGK are not authorised to make additional oral agreements or to give oral assurances which go beyond the content of the written contract.

§ 3 Prices

(1) We charge the price valid on the day of delivery in EURO plus the statutory turnover tax as applicable at the time.

Unless otherwise stated, TGK is bound by the prices quoted in its offers for 30 days after the date on which the offer was made. Otherwise the prices quoted in the confirmation of the order by TGK are valid plus the statutory turnover tax applicable at the time. Additional deliveries and services shall be charged separately.

(2) Prices, if not otherwise agreed, are quoted EXW warehouse Schloss-Holte, but do not include costs for packing, transport, transport insurance and pallet exchange.

(3) For orders of up to 50.00 EUR net value of goods there is an extra charge of 7.50 EUR for reduced quantity.

§ 4 Time limits for delivery and performance

(1) Any agreements on delivery dates and time limits, whether binding or non-binding, must be made in writing.

(2) TGK is not liable for any delays in deliveries and services due to *force majeure* and due to events which impede delivery or render it impossible for a longer period of time these include in particular strikes, lock-outs, official orders etc. also events of this kind affecting the suppliers of TGK or its sub-suppliers even if binding time limits and dates of performance have been expressly agreed. Such events give TGK the right either to postpone delivery or performance for the duration of the impediment, allowing for a reasonable time for resumption of performance, or to withdraw from the contract completely or in part on account of the part not yet performed.

(3) If the impediment lasts longer than three months, then the buyer is entitled, after the lapse of a reasonable additional period of time, to withdraw from the contract in respect of the part not yet performed. If the time of delivery has been extended or if TGK has been released from its obligations, then the buyer cannot claim damages on these grounds. TGK can only invoke the circumstances mentioned above, if the buyer has been informed of these circumstances without delay.

(4) If TGK is responsible for failing to comply with the time limits and dates stipulated in the contract or has delayed delivery, then the buyer can claim damages for delay to the amount of ½% for each complete week of the delay, but only up to a maximum amount of 5% of the invoice value of the deliveries and services affected by the delay. Any further claims are excluded, unless the delay is the result of a serious fault on the part of TGK.

(5) TGK is entitled to supply goods and services in part only at any time, unless the buyer is not interested in part delivery or part performance.

(6) TGK is only bound by its obligations to perform and to deliver under the contract if the buyer also fulfils his obligations under the contract punctually and in a proper manner.

(7) Should the buyer fail to take delivery when offered, then TGK is entitled to claim compensation for any damage suffered; as soon as the

failure to take delivery has been established the risk of accidental deterioration or destruction passes to the buyer.

§ 5 Passing of risk

The risk is passed to the buyer as soon as the consignment has been transferred to the carrier responsible for the transport or has left the TGK warehouse for the purpose of dispatch. If dispatch is delayed at the request of the buyer, then the risk passes to the buyer once he has been notified that the goods are ready for dispatch.

§ 6 Buyer's rights in respect of defects

(1) Products are delivered free of manufacturing or material defects. Modifications in the construction or form, or deviations in the colouring are not deemed to be defects, as long as they do not impair the products' proper use or their value. Claims arising out of defects must be made within the time period of one year from the date of delivery of the products.

(2) If the directions of use have not been properly complied with, the products altered, parts replaced or if consumables have been used, which do not correspond to the original specifications, then no claims can be made in respect of defective products, unless the buyer can refute a substantiated assertion that the defect was caused by one of these circumstances.

(3) The buyer has the duty to inform TGK of defects in writing without undue delay but at the latest within one week of receiving the goods. TGK must be informed in writing of defects which cannot even after careful inspection be discovered within this specified time period, as soon as the buyer has become aware of such defects.

(4) Should the buyer inform TGK that the products are defective, then TGK shall have the option to demand at its expense that:

- a) the defective product shall be sent to TGK to be repaired or replaced,
- b) the buyer shall keep the defective product, and a TGK technician shall be sent to the buyer to carry out the repair.

If the buyer wishes the rectification of the defects to be carried out at a place of his own choice, TGK may comply with this request. In this case there is no charge for replaced parts, whereas working time and travel expenses are charged at the TGK standard rates.

(5) If the defect cannot be rectified within a reasonable period of time, then the buyer has the option either to demand a reduction in price or to withdraw from the contract.

(6) Any liability for normal wear and tear is excluded.

(7) Claims against TGK arising from defects may only be made by the buyer who is party to the contract and are not transferable.

§ 7 Retention of title

(1) Until settlement of any claims TGK may have against the buyer on any legal grounds now or in future, (including any claims for settlement of the current account) TGK is entitled to the following securities, which will be released on demand at the seller's option, as far as their value exceeds the debt claims by 20% with lasting effect.

(2) The goods remain the property of TGK. Any processing or modifying of the goods is always undertaken on behalf of TGK as supplier, but does not give rise to liability on the part of TGK. Should TGK's (co-) ownership have been transferred because the goods have been mixed with other goods then it is herewith agreed that the buyer's (co-) ownership of the integrated goods passes proportionately to TGK. The buyer shall keep the property under joint ownership in safe custody free of charge. Goods (co-) owned by the seller are in the following denoted as reserved goods.

(3) The buyer is entitled to process and sell the reserved goods in the proper course of business, provided that he is not in default. The goods may not be mortgaged or transferred by way of security. The buyer shall herewith transfer to the full extent any debt claims arising from resale or any other legal grounds (insurance, tortious acts) in respect of the reserved goods (including any claims for settlement of the current account) for the purposes of security.

TGK revocably authorises the buyer to recover debt claims transferred to TGK for his account in his own name. This authorisation can only be

revoked, should the buyer not properly meet his obligation to pay.

(4) If rights to the reserved goods have been acquired by a third party, particularly if rights have been pledged as security, then the buyer shall inform this third party of TGK's title in the property without undue delay to enable TGK to assert its right to ownership. If the third party is not able to compensate TGK for any court or extra-judicial costs which have arisen in this connection, then the buyer is liable for these costs.

(5) If the buyer does not act in conformity with the terms of the agreement—particularly by delaying payment—then TGK is entitled to withdraw from the contract and demand the return of the goods.

§ 8 Payment

(1) Unless otherwise agreed, the prices stated on TGK's invoices are payable without deduction within 30 days of receipt of the invoice

TGK is entitled to use the buyer's payments first to settle any outstanding debts, even if otherwise stipulated by the buyer, and will inform the buyer of the type of settlement which has been effected. If costs and interest have already accrued, then TGK is entitled to settle first the costs, then the interest and finally payment due for main performance under the contract.

(2) Payment is not deemed to have been received until TGK has free access to the amount due. In the case of cheques payment is not deemed to have been received until the cheque has been honoured.

(3) If the buyer delays payment, then TGK is entitled to demand interest at the rate of 8 percent points above the basic rate of interest as blanket damages from the applicable date onwards. The percent points shall be reduced if the buyer is able to prove that the actual damage is lower; proof of higher damage on the part of TGK is admissible.

(4) If circumstances become known to TGK which cast doubt on the buyer's creditworthiness, in particular if a cheque has not been honoured or payments have been withheld, or if other circumstances become known to TGK, which cast doubt on the buyer's creditworthiness, then TGK is entitled to demand immediate payment of the outstanding debt, even if cheques have been accepted. In this case TGK is also entitled to demand pre-payments or provision of security.

(5) The buyer shall not be entitled to set off, retain or reduce the purchase price, even if notice of defects has been given or counterclaims pleaded, unless the counterclaims have become res judicata or are indisputable. The buyer however shall also be entitled to retain payment on the grounds of counterclaims arising from the same contractual relation.

§ 9 Patents, copyrights, trademarks

(1) TGK shall release the buyer and his customer from any claims arising out of infringements of copyrights, trademarks or patents, unless the delivery item is based on the buyer's design. TGK's duty to release the buyer is limited in amount to foreseeable damage.

Additional requirements for release are that conduct of litigation shall be left to TGK and that the alleged infringement was solely imputable to the nature of the items supplied by TGK, these not having been mixed or used with other products.

(2) TGK may be released from the obligations incurred in subsection 1 by either

a) procuring the required licences in respect of the patents allegedly infringed or

b) by offering the buyer either a modified delivery item or parts of it respectively, which when substituted for the delivery item or those parts respectively causing the infringement would remove any grounds for legal action based on infringement.

§ 10 Liability

(1) All claims for damages are excluded irrespective of the type of breach including tortious acts, unless damage was caused intentionally or by gross negligence.

(2) If contractual conditions have been breached then TGK is liable for any negligence but only to the amount of foreseeable damage. Claims cannot be made for loss of profit, expenses saved, on the grounds of claims for damages by third parties or for any other direct or indirect consequential damage, unless one of the properties guaranteed by TGK is especially intended to protect the buyer against such damage.

(3) The limitation on or exclusion of liability under subsections 1 and 2 shall not apply to claims arising from fraudulent conduct on the part of TGK and also not to liability for guaranteed properties of goods, for claims under the law on product liability or claims for death or personal injury.

(4) Any limitation on or exclusion of TGK's liability, also applies to its employees, free-lance workers, representatives and vicarious agents.

§ 11 Additional terms of delivery and payment for export trade

(1) All deliveries to foreign destinations are effected EXW warehouse Schloss Holte-Stukenbrock. Payment for dispatched goods must be by COD, advance payment or LC, for which the buyer bears the costs.

(2) An additional service charge of 25 EUR is imposed for deliveries below a goods value of 250.00 EUR.

§ 12 Data protection

The buyer allows any data arising from the trade relation to be held on data media. Third parties shall not be allowed access to any such data TGK may hold.

§ 13 Applicable law, place of jurisdiction, partial invalidity

(1) These terms of trade and all the legal relations between TGK and buyers are governed by the laws of the Federal Republic of Germany.

(2) If the buyer is a merchant, legal person under public law or a public special fund, then the exclusive place of jurisdiction for any disputes directly or indirectly arising out of the contractual relation is Schloss-Holte.

(3) Should a provision in these terms of trade or a provision under other agreements be or become ineffective, then this shall not affect the validity of all other provisions or agreements.

Schloss Holte, 01.11.2006