

# Sales Terms and Conditions of Vereinigte Kreidewerke Dammann GmbH & Co. KG



## § 1

### Scope of Application

(1) These Standard Sales Terms shall exclusively apply. Contrary or differing conditions by Buyer or an agent are not recognized unless they are expressly approved. This also applies if performance is accepted with knowledge of contrary or varying conditions by Buyer.

(2) Unless the parties agreed on other terms, the INCOTERMS, latest addition, apply.

(3) In case parts of these Standard Sales Terms prove to be ineffective, the efficacy of the other parts of these Standard Sales Terms remain untouched.

(4) These Standard Sales Terms shall also apply to future transactions. They can be found on our internet homepage. Therefore, nobody should claim that he did not know our standard sales terms.

## § 2

### Offers and Conclusion of the Contract, Proviso

(1) Unless there are other agreements, our offers are non-binding and without commitment.

(2) All legally binding agreements are to be done in writing. Employees are not authorized to enter into verbal agreements or to make verbal warranties which go beyond the written contract with the exception of Managing Director or authorized management (ppa.)

(3) Sales that are based on purchases from our suppliers are done on the proviso that we have been supplied with the right product and in time by our supplier.

## § 3

### Price and Payment

(1) In case there are no other agreements, prices are ex works. Buyer is responsible for any cost incurred in connection with Railway transport, particularly connection fees, for the provision of cargo cars and weighing by the Railway and others. The calculation of the price of the delivered goods, also in case of shipment by boat, is based upon the weight determined at the point of departure either at the factory or at the railway. The declared prices are based upon the costs (such as costs of raw materials and supplies, wages, freight etc.) at the time the offer was made. Should the costs change until the time of delivery, we reserve the right to adjust the agreed upon price. The Incoterms in its latest published version shall apply to all offers.

(2) The VAT is not included in our prices.

(3) Unless there are other agreements, the purchase price is payable within 14 calendar days after the date of invoice without any deduction.

(4) If Buyer is in arrears of payment, we are entitled to claim interest in the amount of 8% above the current base interest rate per annum. We further reserve the right to show higher damages caused by any delay and to claim such damages.

(5) Cheques or bills of exchange will be accepted on account of performance. Buyer shall bear any and all costs arising from processing of cheques or bills of exchange. There shall be no obligation for timely submission and protest

(6) In the event that a bill of exchange has been protested or if a Buyer's cheque is not honoured or if we receive information about other circumstances sufficient to doubt the creditworthi-

ness of Buyer, we are entitled to claim the total debt due. This also applies if we have accepted the cheque or the bill of exchange. In such case, we are entitled to request advance payment or security

(7) Buyer has a right to a set-off or a right to retention only if the counter claims are not contested or there has been a final decision by a court.

## § 4

### Retention of Ownership

(1) Until all claims (including claims to balance the current accounts), which we are entitled to bring against Buyer at the time of the conclusion of the contract have been fulfilled, the following securities are granted to us, which upon request, will voluntarily release to the extent that the securities steadily exceeds the claims by more than 20 %.

(2) The goods shall remain our property. Manufacturing or re-processing shall be done on our behalf as the producer, but without any obligation on our part. If a new product is created through manufacturing or re-processing, Buyer acquires an equivalent right to the new product. In the event that the property right ceases due to a combination and confusion, both parties agree that we acquire the coownership share of Buyer in proportion to the invoice amount of the changed product. Buyer shall hold the co-ownership share for us free of charge. Goods in which we have a co-ownership share shall be named reserved goods.

(3) Buyer is entitled to process and to dispose of the reserved goods in the ordinary course of business unless he is in default. Pledging and transferring of title for security purposes are not permitted. In case reserved goods are sold by Buyer or any other reason for a claim concerning the reserved goods (insurance, others), they have already been fully assigned by Buyer to us for security purposes. We revocably authorize Buyer to collect the assigned claims on his account and under his name. This authorization can only be revoked if Buyer does not fulfil his contractual payment obligations.

(4) Pawning and / or usage as security of goods that have not been fully paid is prohibited to the Buyer. In case of attack by a third party, particularly in the form of attachment of property, Buyer shall notify the third party that it is our property and shall immediately inform us in order to enable us to enforce our property rights. To the extent that the third party is unable to reimburse us for court fees or other costs incurred, Buyer shall bear such costs.

(5) If Buyer acts inconsistently with this agreement, particularly in default of payment, we are entitled to reclaim the reserved goods and eventually to require the assignment of the right to recover possession of the goods against a third party. Neither reclamation nor attachment of the reserved goods shall be deemed to be a rescission of contract by us.

(6) In case retention of ownership can only be achieved with the support of the Buyer, for example registrations, etc. Buyer has to carry out such things. This is a main contractual duty.

## § 5

### Passing of the Risk

(1) The risk shall pass to Buyer as soon as the goods have been handed over to persons responsible for the transport or the goods have left our warehouse for the purposes of transport. This also applies if the delivery is rendered by our vehicles.

**§ 6**  
**Time of Delivery**

(1) If a period for delivery is agreed upon, it shall begin on the date of the confirmation of the order, however not before all collateral issues have been agreed upon concerning the order and eventually all necessary documents and drawings have been agreed to and been received. The time of delivery is observed if the goods have left the place of production before the time for delivery has passed or if the goods are ready for shipment at the place of production and the shipment has been hindered without fault on our part. In the event of sale for delivery on call the volumes and dates of delivery for each call are subject to special agreement.

(2) In case the delivery of the goods has to be delayed due to unexpected circumstances of any kind, e.g. obstacles in transport, damage on machinery, illness, strike, plant interruption (or breakdown) or other force majeure, an adequate extension will be granted. This also counts in case the circumstances occur after we have come in default. Costs, that are related to such delays will not be covered by us.

(3) Any liability for damages due to default of delivery is excluded. This does not apply if the default is intentional or a result of gross negligence or results from a violation of a material contractual obligation. In case of gross negligence or a violation of a material contractual obligation, our liability is limited to typical contractual and foreseeable damages. In any case, liability is limited to € 10 Mio.

(4) If, after we have gone in default, Buyer sets a reasonable grace period Buyer is entitled to rescind from this contract upon expiration of the grace period. Damages for failure to perform are excluded. Section 6 paragraph 3 sentences 2 and 3 shall apply.

(5) We are entitled to partial delivery or partial performance to the extent reasonable under the circumstances.

(6) Compliance with our obligation to deliver requires the timely and orderly performance of Buyer's obligations and commitments.

(7) If Buyer is in default of acceptance or violates other duties to cooperate, we are entitled to claim any damages which may arise as well as any additional expenditures. In this case, the risk of accidental loss or accidental deterioration of the goods is transferred to Buyer at the time default of acceptance occurs.

**§ 7**  
**Warranties**

(1) Buyer must give written notice of any defects without undue delay, at the latest within one week of the receipt and ownership of the goods. Defects which could not be discovered upon a reasonable inspection of the goods within this time period, must be notified in writing without undue delay upon their discovery.

(2) In so far as the goods are defective at the passing of the risk, we are entitled to in our choice of either a curing of the defect or a substitute delivery. In cases of a curing of the defect, we are obliged to bear all reasonable expenses to cure the defect such as the costs of transport, transport fees, labour costs and other expenses unless those costs are increased because the goods are brought to a place other than the place of performance.

(3) If we are not prepared to cure the defect or to render a substitute delivery, or if a curing of the defect or the substitute delivery is delayed beyond a reasonable time due to reasons for which we are responsible or if we unsuccessfully try to cure the defect or to complete a substitute delivery, Buyer shall be entitled to choose between a rescission of the contract only for the goods that are defected and a proportionate reduction in the purchase price.

(4) In so far as the third sentence following this one and paragraph (5) do not provide differently, all further claims by Buyer – on whatever legal ground – are excluded. Therefore, we are not liable for damages which do not relate to the delivered good. Furthermore, we are not liable for Buyer's loss of profit or other economic damages. The above mentioned exemption from liability does not apply if the damage has been caused intentionally.

(5) As far as liability results from gross negligence or a violation of a material contractual obligation, the liability is limited to typical contractual and foreseeable damages.

(6) Warranty claims are subject to a limitation period of twelve months after the passing of the risk. This also applies to a claim for damages which derive from the defect

(7) As far as competing claims are not already excluded under section 4 and 6, these claims are subject to a limitation period of twelve months after the occurrence of the act of infringement.

(8) Guarantee of product attributes: In case seller declares a guarantee for certain product attributes for a certain period of time, buyer has all rights derived from that guarantee under the conditions of the guarantee in case of product default.

(9) In case seller declares a guarantee for a certain period of time, seller is responsible for all product default during that period of time.

**§ 8**  
**Liability**

(1) (1) Any liability for damages is excluded, notwithstanding the legal nature of the asserted claim, except in the cases pursuant to paragraph 6 section 2 and 3, paragraph 7 section 4 and 5.

(2) Paragraph 1 does not apply to claims according to sections 1, 4 Produkthaftungsgesetz (Product Liability Statute). To the extent that the exclusion of liability pursuant to section 7 paragraph 4 to 6 does not apply to product liability claims per § 823 BGB, our liability is limited to the amount that will be paid by the insurance.

(3) Paragraph 1 does not apply to cases of initial inability to perform. In case of an inability to perform at our fault, our liability is limited to typical contractual and foreseeable damages. This does not apply to cases of intentional nonperformance.

(4) As far as our liability is excluded or limited, this also applies to the liability of any person employed by us in the course of the performance of our obligations.

**§ 9**  
**Jurisdiction and Applicable Law**

(1) In so far as Buyer is a merchant, the exclusive jurisdiction shall be our place of business for all disputes arising out of the contract, direct or indirect, including disputes concerning cheques and bills of exchange.

(2) These Standard Sales Terms and the entire legal relationship between Buyer and Seller are exclusively subject to the law of the Federal Republic of Germany, however giving no effect to the conflict of law provisions thereof and the UN Convention on Contracts for the International Sale of Goods (CISG) or other similar international agreements.