

GENERAL CONDITIONS OF SALE, DELIVERY AND PAYMENT

No 1 Scope of Validity of these General Conditions and Terms of Business And Delivery

The following Conditions and Terms of Business and Delivery shall apply for any and all legal and business transactions made between the firm of SAHCO GmbH (hereinafter referred-to as "Seller") and the Customer (hereinafter referred-to as "Buyer"). No provisions or conditions which are diverging there-from, more particularly no provisions or conditions derived from the Buyer's Purchasing Terms and Conditions, will become elements of any of the agreements contracted by and between the parties, unless and until this will have been expressly and provably agreed upon.

No 2 Formation and Conclusion of Contract, Minimum Value of Single Orders, Buyer's Own Obligatory Checking and Inspection Responsibilities, Delay or Default of Delivery; Non-performance

1. The Seller's offers are not binding. Orders and all contracts for delivery shall become obligatory for the Seller with the Seller's confirmation in text form (within the meaning of §126b BGB (German Civil Code)) only. Subsidiary companies and commercial agents or representatives shall act as agents to procure sales business operations. Neither subsidiary companies nor commercial agents or representatives have any authorization or power to conclude any contracts or agreements. Neither DIN/EN/ISO standards nor RAL quality stipulations shall be of any binding nature and are therefore not part of a binding contract for the Seller.

2. It is agreed that the minimum value for any one single order concerning the delivery shall amount to €50.-. If and when the value of any one order is or will be less than that amount, the Seller will add an €8.- extra charge to the invoice.

3. The Buyer is obligated to independently

check the goods for their intended use – irrespective of the care label which is attached to or comes with the material – and furthermore also for maximum strain. It is, therefore, the Buyer alone who will be liable for exact usage in its specific field of business.

4. The Seller will not, by concluding any supply or delivery contract, furnish any guarantee or warranties or accept any risk when it comes to the furnishing of materials or accessories which are required for the production of the goods. In so far the Seller shall be held responsible for and shall be liable only in case of wilful and grossly negligent action to the extent where such a restriction is or will be permissible under the law and Seller's liability is not barred and precluded in accordance with and by the terms of the following provisions.

No 3 Sample collections and returnable shipments

1. Sample collections are the Seller's property and can be demanded back at any time. The Buyer shall be obligated to properly store the same. Samples returned damaged or cut will be charged by subsequent invoicing.

2. Sample consignments are the Seller's property and are to be kept at Seller's disposal – to be returned within 2 weeks after their receipt by the prospective buyer. Freight costs shall be charged to the Buyer. If the goods are not returned within 2 weeks they shall be considered purchased by the Buyer at current conditions. The Seller agrees and obliges itself to, at the beginning of such two week time period, draw the Buyer's attention to the bearing of the Buyer's response at the time when such a delivery will be made.

No 4 Purchase price and payment

1. All prices as quoted are net prices and VAT will be added at the applicable rate. The Seller reserves the right to proceed to price changes

for deliveries and work executed later than 4 months after a contract has been made. The computation of the prices charged will be made in the currency specified in the invoice. Unless it will have been otherwise agreed upon, the conditions of payment beginning on the date of the invoice are : Payment within 30 days: net, with the time period allowed for payment starting on the date of the invoice. Discounts are to be taken off the value of the goods only.

2. In case of default in payment the Buyer will be charged and invoiced default interests which will be in the amount of 9% above the basic interest rate of the European Central Bank. Bills of exchange will be accepted on account of performance only and within 10 days after the date of the invoice and with a maximum validity of 3 months. Discounts granted shall be no more than 2%. Discount and collection charges shall be at the Buyer's expense.

3. If the Buyer will, following the conclusion of a contract or after the delivery of goods, be subject to a deterioration of its economic situation or status, which is due to the Buyer's fault, if the Buyer were to be in delay or in default, if bills of exchange are protested or if there are or will be similar events for which the Buyer is to be held responsible and which give rise to the concern that the Buyer's solvency will be affected thereby, any outstanding claims or receivables shall respectively become due for immediate payment and the Seller shall be entitled to immediately put the Buyer in delay and to collect Seller's claims.

No 5 Invoicing by fax or e-mail

1. In addition to the General Terms and Conditions (AGB), invoicing by fax or e-mail is hereby agreed. Such fax or e-mail invoicing shall replace original invoices being sent by mail. The thus conveyed invoicing data shall be binding.

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2. Invoices are documents that have to be kept, and the recipient of the faxed or e-mailed invoices shall therefore see to it that document-quality paper is being used.

No 6 Freight and packaging

Delivery of the merchandise shall be made by way of the least expensive type of shipment and ex Seller's storage or warehousing facilities. All costs and charges for such freight shall be paid by the Buyer. By the same token the Seller will also charge and invoice packaging costs.

No 7 Transfer of risks

The risk of perishing, loss, destruction, deterioration and the risks of shipment of the merchandise shall, in all cases, pass on to the Buyer as soon as the goods will have left the Seller's business and storage premises. This shall also apply to deliveries which are or will be made free Buyer's address. If the shipment of the goods will be delayed for a reason for which the Seller is not responsible, all risks will pass to the Buyer already at the moment where notice will be given to the Buyer that the goods are ready to be dispatched. The same shall also apply, if the Seller makes use of a right of retention or lien.

No 8 Liability and guarantee, also regarding the usability of the goods

1. The Seller reserves the right to the occurrence of deviations or differences in material quality and colour as well as the right to rework the material as long as such differences are within the tolerances accepted in the trade and dictated by technical standards, as well as differences in width of $\pm 5\%$ and differences in length which are due to material characteristics. It is not possible to give any guarantees to the contrary.

The Seller will not assume any responsibility to the effect that the goods will be useable for the Buyer's special intentions or purposes, and no liability will, in particular, be assumed, if the Buyer processes, works or uses the material for purposes for which the nature, the quality and the character of the goods are not suited. The same shall also apply, if and when the Buyer makes the intended use known to the Seller, as only the Buyer has exact knowledge about actual strain and final usage.

Any and all liability on the part of the Seller for normal wear and tear and the usual deterioration which is due to the normal use of the material shall be barred and precluded.

2. Any and all faults, defects and deficiencies which are perceivable and detectable at the time of delivery of the merchandise cannot be considered and taken into account, unless a notice of this defect and complaint is reported in text form (within the meaning of §126b BGB (German Civil Code)) to the seller within one week after delivery of the said merchandise and if the uncut material is returned to and received by the Seller for examination no later than 2 weeks after its delivery. Notice of and complaints concerning faulty measurements or material shortages shall also be given within that same time period for any such complaints to be taken into account. Prior to cutting, the material is to be checked for small and technically unavoidable defects or deficiencies, and restitution shall be granted provided that the above-specified time period and deadline will have been observed.

If the Buyer wishes to assert any claims for defects or deficiencies, then the Buyer shall have to do so by informing the Seller thereof within those periods of limitation which are specified in Article 9 hereof.

The Buyer agrees and obliges itself to let the Seller have a copy of the invoice and the original merchandise in evidence of defects or deficiencies.

If the Buyer will fail to comply with these ob-

ligations the Seller shall be entitled to refuse the complaint without any further comments or notice.

3. If the assertion of a claim for defects or deficiencies is justified, the Seller shall, at its option, either provide for replacement by supplying goods which are free from defects or deficiencies, or remedy or repair such defect or deficiency. If and in so far as such replacement, remedy or repair of any such defect or deficiency were to fail, the Buyer shall be entitled to rescind the contract or reduce the purchase price. Remedy or repair of defects or deficiencies shall be deemed to have failed after the second unsuccessful attempt to do so, unless something else is found or determined, in particular in consideration of the type of the object or of the defect or deficiency concerned or of the other prevailing circumstances.

Over and above that the Buyer may claim damages instead of performance or indemnification for futile expenses incurred, if the Seller or Seller's vicarious agents are to be charged of either wilful or grossly negligent action. This restriction shall not apply to the extent and in so far as the law mandatory stipulates an obligatory statutory liability on the grounds of non-compliance with an obligation which is decisive for the achievement of the overall purpose of the contract or the liability involved is a liability on account of injury or affection of the life, limb, body or health of any one person or persons.

4. Unless the damage was caused in a wilful or grossly negligent manner or liability is based upon an injury to life, limb and health, the seller's liability shall be limited to the amount of the damage as it was foreseeable and typical for the contract when such was concluded.

5. Liability under the (German) Product Liability Act shall not be affected thereby.

6. The Seller shall pay for those expenses which will be required for purposes of providing for remedy of defects or deficiencies by

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either re-working and repair or replacement of defective products, more particularly for transport, travelling, work and materials costs and expenses, in so far as such expenses are or were not increased due to the fact that the object as purchased was transferred and taken to a place other than the Buyer's place of residence or business after delivery thereof, unless such transfer was or is in line with the intended use of such object.

The Seller will not pay for any other ancillary costs or incidental expenses which result from complaints submitted or claims asserted on account of any defects or deficiencies, and it will, more particularly, not be held liable for any indirect or consequential costs or losses, such as, for instance, loss of earnings, loss of use, capital expenditure or loss of profits.

Claims arising under Sect. 445a BGB [German Civil Code] are not affected.

7. Only the actual direct Buyer shall be entitled to assert any claims based on warranty in relation to the Seller; and it shall not be possible for any such warranty claims to be transferred, ceded or assigned to any third party or parties.

No 9 Statutory Limitation

1. The Buyer's right of remedy of defects or deficiencies by either re-working and repair or replacement of defective products, indemnification for damages, reimbursement of expenses or reduction of the purchase price on the grounds of a defect or deficiency shall become barred by and under the statute of limitations after a one year term following the delivery of the object concerned will have elapsed. Rescission shall be inoperative once the limitation period will have expired.

2. All the Buyer's other claims or rights will equally be subject to and barred by statutory limitation after the expiration of a one year period of time. The date of commencement of the respective period of limitation shall be

determined by statutory provisions.

3. If the damage was caused by a wilful or grossly negligent breach of duty or liability is based upon an injury to life, limb and health, in deviation from Section 1 and 2 the statutes of limitations shall apply.

No 10 Reservation of ownership title

1. The goods delivered to the Buyer shall continue to be the Seller's absolute property until the total purchase price inclusive of all additional costs will have been paid, or until the entire debit balance will have been fully paid, if the business relationship between Buyer and Seller is marked by repeated or continuous business operations and transactions. The Seller's reservation of ownership title shall become

finally extinct, void and null, as soon as all those claims will have been paid which were still due and owing at the time when the payment is made.

The Buyer shall be entitled to resell the goods delivered to it or any new items resulting from the processing or working thereof in the regular course of its business operations only. The Buyer by these presents cedes, assigns and transfers to the Seller all of the rights or claims which may be due to the Buyer on account of either such resale or any other legal reason. The Buyer shall be entitled to collect these claims as long as it will make its due payments to the Seller according to contract regulations. In consideration of the assignments made, the Buyer shall immediately pass amounts received for the Seller on to the Seller in so far as Seller's claims are due for payment. Even if the Buyer does not comply with this obligation, any and all amounts so received belong to the Seller and shall be kept separately. The Buyer shall immediately advise the Seller of any interference or seizure by any third party or parties of goods delivered to the Buyer subject to the reservation of Seller's own-

ership title or of any claims which were so transferred, ceded and assigned.

2. The Buyer shall be entitled to process or work on the goods as part of its regular business operations. In that case the Buyer is, however, acting for and on the Seller's behalf, who shall then be deemed to be manufacturer according to the provisions of Section 950 of the German Civil Code. If the goods delivered subject to the reservation of the Seller's ownership title are or will be compounded, combined or mixed with other items, the Seller shall become a co-owner of the new item or any mixed stock, such co-ownership title amounting to the value of the Seller's claims. If the Buyer will resell, process, work, incorporate or install goods delivered to it with the reservation of the Seller's ownership title, or any items made from them – no matter what the condition thereof will be – will be resold, processed, worked on, incorporated or installed by the Buyer; then the Buyer as of now and until all of the Seller's claims resulting from any such delivery will have been paid in full, transfers, cedes and assigns to the Seller any and all claims to which the Buyer will be entitled in relation to its customers or any third party or parties on account of such sale for the Buyer's processing or installation of the material or object concerned. If a new item or stock resulting from compounding, combining or mixing within the meaning of the foregoing provisions will be sold, processed or installed, the said cession, transfer and assignment shall cover that particular amount which corresponds to the ratio of the Seller's co-ownership title.

3. If and when the realizable value of the goods which are subject to the Seller's reservation of ownership title will exceed the claims for which security is to be provided by more than 110%, the Seller agrees and obliges itself to, upon the Buyer's request, in so far release those securities to which the Buyer is or will then be entitled. The limit for the accrual

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of a right to the release of any such securities shall be 150% of the estimated value of the securities provided.

No 11 Violation of the property rights of third parties

If the Purchaser specifies a design/pattern/form for the products to be made by the Vendor, especially rugs/carpets, to the Vendor in any individual case, the Purchaser guarantees that the design/pattern/form does not violate any current laws and/or property rights of third parties. The Vendor bears no liability in this case. The Purchaser is obliged immediately to release/hold free the Vendor from any claims on the part of third parties, especially claims for damages compensation and to pay for all claims arising from the violation of property rights.

No 12 Returns

The Seller shall not be obligated to take back articles customers ordered. No 8, however, also obtains. If the Seller, in exceptional cases, takes back ordered articles, it shall be entitled to charge cutting waste, e.g. up to 20m: 20%, more than 20m: 10%.

Please do not return articles without consulting the Seller first. The Seller reserves the right to reduce refunds in case returns have not been properly rolled or packed.

No 13 Grace Periods for Delayed Deliveries

1. Following the expiration of the delivery period a grace period shall start to run, which shall be just as long as the delivery period, but which shall be 18 days at the most. Following the expiration of such grace period for the delivery of any delayed shipments the Buyer shall be entitled to rescind the Contract, unless the Buyer will, within a period of another 14 days, demand that the Contract be fulfilled

and complied with.

Following the expiration of the grace period granted for any one delivery the Seller shall, however, be released and discharged from its obligation to deliver; if the Seller will, either during such grace period or after its expiration, ask the Buyer to let the Seller know whether the Buyer insists on fulfilment of the contract concerned and the Buyer will not promptly respond thereto. Contracts for delivery by a fixed date will not be transacted.

2. Over and above that the Buyer can only assert claims for damages instead of insisting on performance, if it will have granted and set a 4 weeks grace period for the Seller to deliver within such grace period, and if either the Seller or Seller's vicarious agents are to be charged or blamed of either wilful action or gross negligence. This restriction shall apply in so far only as it is or will be permissible under the provisions of law. Any such delivery grace period shall be counted from that particular date on where the Buyer's notification is dispatched by either registered letter or fax.

3. The grace period for delivery of goods kept in stock and ready for dispatch and shipment shall be 5 days at the most. Over and above that the provisions of paragraphs 1 and 2 hereof shall apply.

4. The Seller must not and shall not assert any claims for late delivery as long as the grace period for any one delivery will not have expired.

No 14 Force Majeure

Both Seller and Buyer shall be exempt and discharged from having to comply with their contractual obligations in so far and as long as they are prevented from so doing due to the effects of force majeure. The party invoking force majeure shall inform the other party of the onset and of the end of any such changed situation which has come up as a consequence of force majeure. Force majeure within the meaning of this provision includes

– without being limited thereto – labour disputes, fire, flood, acts of war, embargo, riots and other circumstances which are beyond the reasonable control and influence of either party and which prevent such party from complying with its contractual obligations.

No 15 Privacy

The buyer undertakes not to transfer to third parties any data arising from the business relationship, to protect these data from any access and abuse by unauthorised persons and to store them in a secure fashion.

No 16 Version of language, Choice of Law, Place of Performance and Place of Jurisdiction and Venue

1. In case of doubt the German Version of this General Conditions of Sale, Delivery and Payment shall be governing.

2. The contractual relationship between Buyer and Seller shall be subject to German law, the application of the UN Convention on the International Sale of Goods being barred and precluded.

3. The place of performance and of jurisdiction and venue for any and all disputes arising between Seller and Buyer in connection with such contractual relationship, inclusive of actions filed on the grounds of dishonoured bills and cheques shall, at the Seller's option, be either Nuremberg, at the Seller's subsidiary companies and commercial agents or representatives principal place of business or at the Buyer's principal place of business if and in so far as the Buyer is a merchant or business entity doing trade under German commercial law, a legal person or entity under public law, or a special public body or entity constituted under public law.

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No 17 Contracts Made by Way of Electronic Business Communications, Data Protection

1. If the Buyer will use the Seller's Web Shop for purposes of concluding a contract providing for the delivery of goods, then all the Seller shall have to do is to ensure and guarantee that the Buyer will be able to call and fetch the Seller's General Conditions of Sale, Delivery and Payment at the time when the contract is made and concluded, and that the Buyer is and will be able to store such General Conditions of Sale, Delivery and Payment in a form which is and will be reproducible. Any and all further obligations on the part of the Seller, particularly pursuant to § 312 i Subsection 1 Sentence 1 No. 1 – 3, Sentence 2 BGB (German Civil Code) are exempt.

2. Personal data shall be used for purposes of processing and executing orders only and shall not be passed on to any third party or parties.

practicable provision by a valid and effective provision which will as far as possible materialize the economic purpose which is sought and intended with it.

No 18 General business terms and conditions to be complied with in connection with German Packaging Regulations

The Seller will not allow for any deductions to be made from invoiced amounts to cover for waste management and disposal of packaging material, more particularly of transport packaging.

No 19 Severability Clause

If any of the provisions of these present Conditions and Terms of Business and Delivery or of the contract or agreement concluded between the parties were to be or become invalid or void in whole or in part, or if any of them will not or cannot be implemented, then this shall not affect either the validity of the rest of the provisions of these Conditions and Terms of Business and Delivery or the contractual relationship as it is existing between the parties. In such a case the parties agree that they will replace any such invalid or im-

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