

# Terms and conditions of sale and design of artemis kautschuk- und kunststoff-technik gmbh

## Status 09/2002

### I. Scope/offers

1. The latest version of these general terms and conditions of sale are valid for all – including future – contracts and other performance. Terms and conditions of the buyer are not binding even if not explicitly rejected upon receipt.
2. Our offers are non-binding; we therefore reserve the right to cancel offers made until such time as they are accepted by the buyer.
3. Our general terms and conditions of sale only apply to companies, persona legala under civil law and special public assets pursuant to § 310 paragraph 1 line 1 German civil code.
4. Deviations of the goods are permitted pursuant to the valid DIN/EN standards or other applicable technical standards. Similar applies for deviations concerning the structure, colour, chemical, physical composition of the goods or individual component parts thereof insofar as these are compliant with the nature of the material used (natural rubber and similar) and are considered standard.

### II. Prices

1. Our prices are in Euro unless otherwise agreed and are valid ex-works, excluding packaging, and in each case subject to value added tax. Prices may be non-binding or fixed as negotiated. In the case of fixed prices we shall be bound to such prices insofar as our deliveries and performance are due within a period of up to four weeks after conclusion of the contract. Otherwise we are entitled to raise prices to the extent necessary to cover costs. In the case of contracts concerning partial deliveries (apportioned supply contract) we are entitled to raise prices pursuant to general price rises we have introduced into the market. In the case of continuous obligations, in particular in the case of continuous supply contracts, deliveries and performance shall be at the prices valid on the day of delivery.
2. In the event that materials are delivered packaged, we shall charge for packaging at cost price; we shall accept return of packaging so delivered as required by law, whereby packaging to be returned by buyer free of freight charges.

### III. Payment and invoicing

1. Our invoices are due from the date of payment entitlement (pursuant to our performance offer to the buyer, detailing the debtor's obligations) unless another procedure is agreed. Invoices are due net without deductions. Date of payment is that day upon which we are credited the amount due. The buyer is in default, without issue of a dunning letter, if payment has not been made within 10 days of the due date of our claim and receipt of our invoice or delivery.
2. We reserve the right to accept/reject bills of exchange. Bills of exchange will only be accepted in payment for debt and are only deemed fulfilled after encashment. Any discount expenses and other charges are to the debt of the buyer.
3. Counter-demands disputed by us or not determined to be legally valid do not entitle the buyer either to refuse payment nor to withhold payment pursuant to § 273 German civil code, nor to setoff. The same applies to the commercial withholding right pursuant to § 269 German commercial code. Any claims by the buyer arising from the business relationship may only be assigned with our express written authorisation.
4. We are entitled to claim interest at the current valid bank rate for overdrafts from the date of expiry of due date, at latest from default, whereby the minimum rate of interest shall be eight percentage points above the basic interest rate. We also reserve the right to demand further compensation for damages.
5. In the event that subsequent to contract conclusion it becomes apparent that the payment of our demands is at risk due to financial difficulties of the buyer, we reserve the rights pursuant to § 321 civil code (plea of insecurity). We retain our right to demand payment of all valid (not barred by date of limitation) claims from the current business relationship with the buyer and to cancel the direct debit authorisation pursuant to section V/5. In the case of payment default we are further entitled to demand the return of the goods after the expiry of a reasonable deadline and to prohibit reselling and reprocessing of any goods delivered. Reclaiming the goods does not represent withdrawal from the contract. All legal consequences can be avoided by the buyer by the payment of or provision of collateral to the amount of our demands considered at risk. The rules of insolvency are unaffected by the above provisions.
6. In cases where discounts have been agreed, we shall allow 2 per cent reduction in the case of payment of our invoices within 14 days of date of invoice, unless agreed otherwise.

### IV. Delivery dates/deadlines

1. Delivery deadlines and delivery dates are deemed fulfilled if the goods leave our works before the date/deadline, provided that the agreed delivery dates and deadlines are not exceeded by more than two weeks.
2. Delivery and performance delays resulting from force majeure, natural catastrophes or due to labour disputes not the fault of the company, transport and operational interruptions not the fault of the company, non-culpable lack of materials and similar reasons at either ourselves or our suppliers entitle us to withdraw from the contract in whole or in part or to extend the delivery deadline by the period of the interruption to work caused by the circumstances – by a maximum of two months – without entitling the buyer to make any claims against the vendor for non-fulfilment of obligations. The buyer is entitled to withdraw from the contract insofar as for the reasons described above a deadline is extended by more than two months; this does not affect the buyer's right to exercise his legal right to withdraw from the contract at some earlier time for example due to the collapse of the business basis or the inability of the vendor to fulfil the performance for a reason not the fault of the vendor.

### V. Ownership conditions

1. All goods delivered remain our property (conditional goods) until fulfilment of all claims arising from the business relationship, for whatever legal reason, including any future or qualified demands.
2. The processing or preparation of the conditional goods is undertaken by us as producer in the sense of § 950 civil code, without representing an obligation. The processed goods are deemed conditional goods pursuant to section V/1. The processing, compounding and mixing of the conditional goods with other goods by the buyer gives us co-ownership rights to the new goods at the ratio of the invoiced value of the conditional goods to the invoiced value of other materials used. In the event that our ownership rights are extinguished due to compounding or mixing, the buyer previously transfers to us his ownership rights in the new item or in the new goods to an amount equal to the invoiced value of the conditional goods and shall keep same in safe keeping free of charge for us. The co-ownership rights created in this fashion are deemed conditional goods pursuant to section V/1.
3. The buyer is only entitled to sell the conditional goods in normal business transactions under his normal terms and conditions and provided he is not in default and also provided that the claims from the reselling pursuant to section V/4 to V/6 are assigned to us. The buyer is not entitled to any other powers over the conditional goods.
4. The claims of the buyer arising from resale of the conditional goods are previously assigned to us. They serve the purpose of collateral to the same extent as did the conditional goods. If the conditional goods are sold together with other goods not purchased from us, the assignment of the outstanding claim arising from the resale is only to an amount equal to the resale value of the respectively sold conditional goods. In the case of sale of goods in which we have a co-ownership share pursuant to section V/2, the assignment of the claim is equal to the value of this co-ownership share.
5. The buyer is entitled to demand payment for the resale until we issue a revocation. We shall only exercise our revocation right in the cases described in section III/5. If we so demand, the buyer is obliged to immediately inform his customers of such assignment to us – insofar as we do not undertake same ourselves – and to forward to us the necessary information and documents for collection of the payable claims.
6. In the event of distraint or other action to the prejudice of the conditional goods by third parties, we are to be informed without delay by the buyer in order that we can issue an intervention claim pursuant to § 771 code of civil procedure. Insofar as the third party is not able to compensate us for court and out-of-court costs of a claim in accordance with § 771 code of civil procedure, the buyer shall be liable for any costs incurred.
7. In the event that the market value of existing collateral exceeds the value of the secured claims by a total of more than 10 per cent, we are obliged upon buyer's demand to release collateral to this extent as we see fit.

### VI. Execution of deliveries

1. In the case of supplies to buyer-specified destinations (§ 447 civil code) the risk of the coincidental loss and the coincidental deterioration of the goods transfers to the buyer as soon as the goods have been submitted to the forwarding agent. The duties and costs of unloading are to the debt of the buyer. We shall only arrange for insurance if so advised by and to the debt of the buyer.
2. We are entitled to undertake supply and performance in instalments insofar as the contractual provisions do not demand

full unitary delivery and full unitary performance and insofar as supply and performance in instalments can be reasonably accepted by the buyer. Any claims of the buyer shall be unaffected by this; in particular the buyer is entitled – if pertinent legal circumstances prevail – to withhold payments until the full delivery has been realised (plea of non-fulfilled contract) and in the event of delay with respect to residual delivery or the impossibility of residual delivery to withdraw from the contract in total (withdrawal from total contract) or to demand substitution of the total amount of damages incurred (damage compensation because of non-fulfilment with respect to the total contract). Supply and performance in instalments shall not affect any possibly existing delay on the part of the vendor.

3. In the case of call-off contracts, we are entitled to produce or have produced the entire quantity ordered as a complete unit. Any changes requested after granting of the contract can no longer be considered, unless this has been expressly agreed. Insofar as no fixed arrangements are made concerning call-off dates and quantities, and as a consequence of which the buyer calls for those goods quantities as per his need, we shall only make deliveries as feasible within our delivery or production possibilities. If the goods are not called as per the contract, we are entitled to submit our invoice after a reasonable time has elapsed. This invoice is then subject to payment as per the provisions of section III/1.

#### **VII. Liability for deficiencies**

1. In the case of justified and immediate notice of deficiencies we are entitled to either remedy the deficiency or deliver a flawless item (subsequent fulfilment) as we see fit. In the case of unsuccessful remediation or justified refusal of subsequent fulfilment, the buyer may reduce the purchase price or set a reasonable deadline upon the expiry of which he may withdraw from the contract if subsequent fulfilment has proved unsuccessful.
2. Expenses in connection with the subsequent fulfilment are to our debt; transportation costs shall be to the debt of the buyer insofar as they are disproportionately high compared with the purchase price of the goods. Additional expenses arising due to the sold goods having been transported to some place other than the headquarters or the regional offices of the buyer, shall not be borne by us unless this corresponds with their use according to the contract.
3. In the event that the buyer leaves us no opportunity to inspect the deficiencies, and in particular denies access to the deficient goods or samples after being so requested, he forfeits the right to claim the goods are deficient.
4. Furthergoing rights are excluded as per the provisions of section VII. This applies in particular to claims for compensation of damages not arising directly due to the goods (deficiency consequential damages).

#### **VIII. General limitation of liability and time limitations**

1. We are only liable for breaching of contractual and extra-contractual obligations in particular for impossibility, delays or unauthorised actions – also by our senior employees and other agents – in cases of intent and gross negligence, limited to the damages foreseeable upon conclusion of the contract.
2. These limitations do not apply for culpable breaches of key contractual obligations insofar as these prejudice the achievement of the purpose of the contract, in cases of obligatory liability pursuant to the product liability law, in the case of injuries to life, limb or health (personal injury) and also not in cases if and insofar as we have deliberately not disclosed pertinent deficiencies or have guaranteed their absence. These provisions do not affect rules pertaining to burden of proof.
3. Insofar as not otherwise regulated, all contractual claims against us accrued by the buyer due to or in connection with the delivery of the goods expire within a period of limitation of one year after delivery of the goods. This does not affect liability for compulsory damages arising due to intent and gross negligence, for personal injury and the limitation of statutory rights of recourse.

#### **IX. Copyrights**

1. We reserve the proprietary rights and copyrights on any cost estimates, drafts, drawings and other documents; these may only be disclosed to third parties with our previous agreement. Any drawings and other documents belonging to others shall be returned upon demand.
2. Insofar as we have delivered items based on drawings, models, patterns or other documents provided by the buyer, the buyer shall bear responsibility for ensuring that the protection rights of third parties are not infringed. In the event that third parties prohibit us in particular from the production and delivery of such items pursuant to protection rights, we are entitled – without any obligation to review the legal situation – to refrain from all further activities in this regard and to demand compensation for damages in the event that the buyer is culpable. The buyer is further obliged to hold us free without delay from any and all claims made by third parties in this connection. If it is legally determined that the prohibition was not legally valid, we shall

recommence with our activities without delay. Insofar as the third party is not in a position to reimburse us for legal, court and out-of-court costs in connection with lifting the prohibition, the buyer shall be liable for any losses incurred by us.

#### **X. Prototypes, moulds, tools and constructions based on buyer designs**

1. If the buyer is required to provide parts in order to implement the order, these are to be delivered free works in good time, free of charge and free of deficiencies together with an agreed or otherwise suitable additional quantity to cover possible wastage. If this does not happen, any costs and other consequences resulting shall be to the debt of the buyer.
2. The preparation of trial parts including the costs for moulds, tools and other apparatus shall be to the debt of the buyer.
3. The proprietary rights on moulds, tools and other apparatus pursuant to subsection 2 above and deemed necessary for the manufacture of certain components are exclusively ours unless otherwise agreed. Should such apparatus become unusable prior to fulfilment of the agreed production amount, the costs required for replacement shall be to our debt. We commit ourselves to keep such apparatus available for at least a 2-year period after their last use.
4. With respect to any moulds, tools and other production apparatus provided by the buyer, our liability is limited to taking the same care as we would with our own property. Any costs for servicing and maintenance shall be borne by the buyer. Our obligation for safe keeping extinguishes – independent of any buyer proprietary rights – by latest two years after the last production from the mould or with the tool; after elapse of the safe keeping obligation, we are entitled to demand the repatriation of the item at any time.
5. Should we accept upon request of the buyer – possibly using tools, moulds or other production apparatus provided by the buyer – the design of goods for supply based on documents provided by the buyer (drawings, designs, plans and similar) and/or using specified materials, we shall fulfil such orders in accordance with the following terms and conditions:
  - a) documents and for the functionality of the prescribed production apparatus and materials; prescribed refers to those documents, production apparatus and/or materials which the buyer specifies as being a binding component for the design of the goods for supply. Irrespective of this, our obligation remains to review the prescribed documents, production apparatus and materials as to their suitability and/or functionality using the technical knowledge standard within the industry, and to inform the buyer in the event that there is any risk of deficiencies arising in the goods for supply.
  - b) If the buyer culpably breaches the obligations set out in subsection a), line 1, the rights (deficiency and liability claims) of the buyer pursuant to the provisions of sections VII and VIII are nullified unless we have not fulfilled our obligations pursuant to subsection letter a) line 2 or we can be accused of some other unprofessional and culpable behaviour. Even in the event of non-culpable breach of buyer's obligations, the buyer's rights pursuant to sections VII and VIII shall be nullified insofar as he accepts the risk of the presence of deficiencies (in particular in the event that the buyer makes it a binding requirement for us to use a design which is not fully developed in accordance with standard engineering practice or to use some production apparatus which has not been sufficiently tried and tested or some material which has not been sufficiently tried and tested), unless we do not fulfil our obligations pursuant to subsection letter a) line 2 or we can be accused of other unprofessional and culpable behaviour. The liability of the buyer pursuant to legal stipulations is unaffected by all cases described here.
  - c) If the item for supply fails prior to hand-over as a consequence of a deficiency in either the production apparatus made available by the buyer or due to the documents and/or materials prescribed by the buyer, if the goods for supply deteriorate or production becomes impossible without our having breached our obligation to inspect and advise (subsection a) and where we have otherwise not behaved in a culpable fashion, we have the right – even in cases where the buyer is himself non-culpable – to claim in lieu of remuneration a part of the remuneration for the work performed and reimbursement of our expenses not included in the remuneration; any further-going liability of the buyer for culpability remains unaffected by this.
  - d) If the buyer uses the goods for supply under conditions which are non-compliant with the specifications of the documents provided to us by himself or which do not correspond with the contractually agreed properties (use of the item) for example under external influences (temperature, air humidity etc.), changes to technical use conditions (period of operation, temperature, pressure, stress, speed of rotation, contacts with acidic or caustic chemicals etc.), installation of the goods for supply in other or technically modified objects etc.) then the buyer's rights pursuant to the provisions of sections VII and VIII shall be nullified unless we commit causal and culpable behaviour.

- e) Insofar as the above provisions described in subsections a) through d) do not state otherwise, the other provisions of these terms and conditions shall also apply for designs made according to buyer's specifications.

**XI. Place of fulfilment, jurisdiction and applicable law**

1. Place of fulfilment for our deliveries is our headquarters. Court of jurisdiction for business persons is that of our headquarters. We are also entitled to litigate against the buyer at his court of jurisdiction.
2. All legal relationships between ourselves and the buyer shall be subject to German law complementary to these terms and conditions, and exempted from the regulations of the United Nations Treaty dated 11.04.1980 concerning international contracts for sale of goods (CISG).

**XII. Version of precedence**

In cases of uncertainty, the German language version of these terms and conditions of sale and design shall take precedence.