

# General Terms and Conditions of Sale

## 1. General Terms - Applicability

- 1.1 Unless otherwise agreed upon by us in writing, the following terms and conditions shall apply to all present and future business contracts between Magnesia GmbH and her Buyers, including any advisory services rendered.
- 1.2 Even if Magnesia GmbH has knowledge of differing, contrary, or supplementary general terms and conditions of the Buyer, these shall not receive contractual validity, unless the validity is consented upon in writing.
- 1.3 These terms and conditions shall only apply to natural persons or legal entities or incorporated private companies, which are acting in execution of commercial or independent business activity (merchants), as well as legal entities under public law and special assets of public law.

## 2. Offer, Conclusion of Contract

- 2.1 Unless otherwise agreed by us explicitly, all offers made by Magnesia GmbH without any fixed validity period are subject to alteration in all parts without notice and are without obligation. Without prejudice to our quotation, the Buyer is called upon to make his own counter-proposition aimed at the conclusion of a contract with us.
- 2.2 A contract shall be valid upon our formal acknowledgment of the order in writing or via means of telecommunication or upon execution of the order.
- 2.3 Any verbal or telephonic agreement, except where it has been approved by one of our directors or officers authorized to act and sign on behalf of the firm, shall be binding upon us only insofar as the said agreement is subsequently confirmed by us in writing. Authority given to staff members is restrained insofar.

## 3. Prices and Shipment

- 3.1 If not otherwise agreed upon, all prices stated by us mean delivery ex works, including packaging, within the Federal Republic of Germany. The actual weight at delivery shall be the basis of price calculation.
- 3.2 If so wished by the Buyer, we will ship the product to destinations as requested by the Buyer. The Buyer carries the burden of shipment costs.
- 3.3 If, after conclusion of the contract, the prices for raw materials or shipment increase or decrease, we reserve the right to adjust prices in relation that those increases or decreases stand to the complete price. Should this be the case, the Buyer will be informed immediately, at the latest 14 days before shipment. We will show proof of increased costs upon the Buyer's request. The Buyer has the right to withdraw from the contract within 7 days of notice of the price increase, if the prices have increased by 5 % or more compared to the prices at conclusion of the contract.
- 3.4 The execution of small orders shall be optional on account of undue processing and handling costs, and shall involve extra costs in the case of execution thereof. Minimum value (each net worth and ex-works) of any order is as follows:  
Within Europe: EUR 350,00  
Outside Europe: EUR 500,00.
- 3.5 We will ship in packaging according to trade custom at our discretion. Transport packaging and all other packaging as specified in the ordinance concerning packaging (Verpackungsordnung) will not be taken back; excluded are pallets. The Buyer assumes responsibility for the disposal of the packaging and for all costs caused thereby. Standard sized pallets remain our property and shall be returned concurrently; otherwise, the cost for the pallets shall be debited to the Buyer's account.

## 4. Time of Delivery, Extent of Delivery

- 4.1 Unless an ex works delivery date has been explicitly agreed by us as binding, any date or time stated by us for delivery is an estimate only. Fixed delivery dates are binding only upon their written confirmation by us.
- 4.2 We are at all times entitled to delivery and fulfillment in part.

## 5. Force Majeure

- 5.1 Force majeure circumstances, particularly strikes, lockouts, war, shortage of raw material, failure of public utilities, Acts of God, or other unpredictable occurrences whatsoever beyond our control and affecting the normal operation of plant and machinery and normal functioning of transport, as well as interference by means of jurisdictional sovereign acts, shall cause to void the contract being affected, and both parties shall be excused from performing their part of the agreement in such an event for the period of the interruption and to the extent of the consequences thereof including the conditions that render the execution of the affected contract uneconomical for a limited time thereafter. This course of action shall also be applicable when under any of the aforesaid circumstances our suppliers are unable to meet their supply commitments and we, on the other hand, do not have any alternative source of procurement or if the conditions of procurement from such alternative source be unacceptable.
- 5.2 Should the delay in delivery in consequence of any of the aforesaid occurrences exceed 6 weeks, both parties to a contract are assigned the right to withdraw from the affected part of the contract.
- 5.3 We shall not be liable to the Buyer for any consequential or indirect damage whatsoever arising out of force majeure circumstances.

## 6. Quality Data

- 6.1 All statements of contents or composition of our goods, whether set forth in our quotations or elsewhere, are estimates only and do not form part of the contract. Any sample of goods submitted by us, except for officially compendial materials, shall be regarded as an approximate specimen only and are subject to certain deviations although we use our best endeavours throughout the manufacture and testing of the materials.
- 6.2 Any advisory suggestion or help given by us about the use of our goods is given according to best knowledge based on the state of our experience and knowledge. We shall assume no responsibility whatsoever with respect thereto; verification of all information and data by means of appropriate tests and trials shall be the sole responsibility of the Buyer.
- 6.3 Observance of statutory and administrative regulations with regard to the storage, further transport and the use of our goods shall be the sole responsibility of the Buyer.

## 7. Place of Performance

Place of performance for all rights and obligations resulting out of this contractual relationship is Lüneburg.

## 8. Passing of Risk

- 8.1 If the Buyer requests that the object of purchase be sent from the place of performance of Magnesia GmbH to another place, then, unless the parties agree otherwise, the risk in the goods passes to the Buyer at the time that the object of purchase is handed over to the shipping agent, carrier or other persons or establishments appointed to the execution of shipment
- 8.2 The Buyer shall immediately - at the latest within the special time limits set out for this case - notify the carrier of complaints arising out of damage from transportation and demand written confirmation thereof.

- 8.3 Transport insurance may be arranged by us at Buyer's special request and on Buyer's account. The weight or pieces of goods handed over to the carrier shall be conclusive for the premium payable.

## 9. Warranty

- 9.1 The Buyer is called upon to examine the goods supplied by us immediately after receipt of the same, and if considered reasonable also by way of appropriate trial, in respect of any manufacturing defects and erroneous or short supply.
- 9.2 Any detectable fault must be communicated by the Buyer in writing in line with the German commercial regulations (§ 377 HGB), but at the latest within 10 days of receipt of the goods; claims for concealed defects discovered later must be communicated in writing within 8 days of discovery of the defect.
- 9.3 Our warranty is limited to a period of 12 months from delivery.
- 9.4 In the event of a Buyer's claim for any defective performance being justifiable we shall, at our option, make good the shortage or replace or repair the defect. Should the repair or replacement be not feasible or be unreasonably delayed or be definitively abortive, the Buyer is entitled to demand a rebate. If a mutual consent to the terms of rebate does not come off, the Buyer is assigned right to demand cancellation of the contract.

## 10. Liability

- 10.1 We shall be liable for any gross negligence or intent of ours to the extent of the law.
- 10.2 Any liability for indemnification attributed to gross negligence of our vicarious agents shall be limited to the typically foreseeable loss or damage caused by the negligence.
- 10.3 In the case of slight negligence, we shall only be liable for violations of the essential contractual obligations, as well as for injuries to life, body and health.
- 10.4 Liability according to the law concerning product liability (Produkthaftungsgesetz) shall not be affected.
- 10.5 We shall not be held liable in any other case.

## 11. Terms of Payment

- 11.1 Unless otherwise agreed by us in writing, all payments shall be for the full amount of each invoice without deduction or set-off and each invoice shall be payable immediately upon receipt.
- 11.2 If any cash discount has been approved by us, the Buyer is entitled to that benefit on express condition that all older outstanding accounts have been settled in full by the Buyer.
- 11.3 In accordance with § 286 (3) German Civil Code (BGB) the Buyer shall be in default, if he does not make payment within 30 days of maturity and receipt of invoice or equivalent bill.
- 11.4 If the Buyer is in default, interest on arrears will be charged in the amount of 8 % above the current German debit interest rate p.a. (Basiszinssatz). The assertion of further or higher damages shall not be impaired.
- 11.5 The Buyer may exercise any right on balancing accounts or of retention of money only insofar as his counterclaims are conferred upon as legal or deemed undisputed.

## 12. Proprietary Rights

- 12.1 Goods supplied by us remain the property of Magnesia GmbH until payment in respect of all debts owing has been made in full.
- 12.2 The Buyer is given authority to dispose of goods, that remain our property by reason of clause 12.1, in the normal course of business only as long as he punctually discharges his debts arising out of the business relationship with us.
- 12.3 When the goods, to which clause 12.1 applies, are processed, we shall be deemed to be the manufacturer of the resulting product and the processing be deemed to have been carried out on our behalf. We shall own the property in the resulting product in its entirety or at least in proportion of the invoice price of our goods to that of the other materials used, whereas the Buyer continues to be an expectant of the title to our goods incorporated in the resulting product. This condition shall also be applicable to any case of blending or mixing.
- 12.4 The Buyer is required to inform us immediately of seizures by third parties of products delivered under proprietary rights, and to give us all relevant information, and hand over all relevant documents for assertion of our claims.
- 12.5 Already at the time of concluding the contract with us, and until payment in respect of all owed debts has been made, will the Buyer - for security reasons - transfer all claims that he has or will have against his buyers as a result from the sale or processing of our products, or other legal claims, which result in the loss of our proprietary rights to the extent of our part of the property of the sold or processed goods, including ancillary rights, to us. In this case, the Buyer receives the price of purchase only as a fiduciary for us, and is obliged to transfer the price of purchase to us and until then to keep it separated from his property as a fiduciary for us. The same applies to claims resulting from insurance contracts. The Buyer is obliged to report to us immediately any seizures by third parties of those rights that the Buyer has transferred to us.
- 12.6 The Buyer is entitled to demand release of securities provided that the realisable value thereof exceeds the claims to be safeguarded by 20 %. The Buyer is given authority to collect the sums due out of our claims as long as he correctly discharges his obligations arising from the business relationship with Magnesia GmbH. The Buyer shall be under obligation to furnish us on demand with a list of names and addresses of his Buyers along with the respective outstanding debts and copies of invoices in evidence thereof.
- 12.7 If payment by the Buyer is no longer carried out in accordance with the contract, we can withdraw from the contract, and demand our product be returned, without our other rights being affected.
- 12.8 The Buyer affirms that he has not otherwise disposed of the above-mentioned rights, which were transferred to us.

## 13. Court of Jurisdiction, Applicable Law

- 13.1 For all legal disputes arising out of any contract with us, Lüneburg, the place where our registration court is located, shall be the court of jurisdiction, if the Buyer is a merchant, a legal entity or an incorporated society, or a legal entity under public law or a special asset of public law. Apart from this, the courts of jurisdiction of the German Civil Procedural Code (ZPO) are applicable.
- 13.2 The laws of the Federal Republic of Germany shall be binding. The rules governing the international trade of goods as outlined in the agreement with the United Nations (Vienna, 11.04.1980), shall however not be applicable.

## 14. Protection of Privacy

The Buyer acknowledges, that data which becomes known to us during the course of the contractual relationship is used and processed by us in accordance with § 28 of the Federal Law concerning the Protection of Privacy (Bundesdatenschutzgesetz).

Lüneburg, January 2006

**Magnesia GmbH**