

# **Standard Business Conditions of TOKAI EUROPE GmbH**

## **1. Terms and Conclusion of Contract**

1.1. Our deliveries and services are executed exclusively according to the present standard business conditions. The buyer's conditions are not binding on us even if they are not expressly rejected. Deviations from our conditions, including additional provisions and conditions of the buyer, are valid only if they are expressly agreed upon in writing.

1.2 Our offers are non-binding. In case of doubt, the terms of the contract are governed by our written order confirmation.

1.3 All stipulations, subsidiary agreements and contractual amendments must be made in writing. The written form requirement can be waived only in writing.

In case of contracts concluded by electronic data transfer, the written form requirement shall be deemed fulfilled even without the parties' signatures.

## **2. Specimens, Illustrations, Leaflets etc.**

2.1 All information concerning our products, in particular all illustrations, drawings, dimensions and performance data contained in our offers and publications, is only approximately authoritative unless expressly designated as binding.

2.2 Guaranteed characteristics must be expressly described as such in the order confirmation. If specimens and samples are delivered, characteristics of the specimen and sample are deemed to be not guaranteed unless expressly agreed upon otherwise in writing.

## **3. Delivery**

3.1 Delivery is always subject to our having obtained correct and timely delivery ourselves.

3.2 Unless terms for deliveries are expressly described as definite in the order confirmation, the buyer can, after expiry of such terms for delivery, set a reasonable grace period for delivery, which must be at least one week. We come into delay after expiry of such reasonable grace period only.

3.3 Unless something different has expressly been agreed upon in writing, a delivery period runs from the date of the order confirmation. In case a delivery date is stated, it refers to the date of dispatch ex works or warehouse.

3.4 The terms for delivery are prolonged, notwithstanding our further rights, by the period by which the buyer is in default of its obligations to us.

3.5 Force majeure and other events that we cannot influence which materially impair or make impossible our ability to deliver, such as operating breakdowns, transport delays, strikes, lock-outs and official measures, release us from the obligations arising from the contract concerned, but temporary hindrances only for the duration of the hindrance plus a reasonable start-up period. If it would be unreasonable to expect the buyer to accept the delay, it can withdraw from the contract in this respect.

3.6 If the buyer is in default of acceptance, we are entitled for the account

and at the risk of the buyer either ourselves to store the merchandise or to have the merchandise stored by a forwarder at the buyer's expense and to charge the buyer for the merchandise. Alternatively we are also entitled privately to sell the merchandise at the buyer's expense and risk after a reasonable period of grace has expired; the proceeds of any private sale of the merchandise will be offset against the purchase price payable by the buyer.

3.7 Insofar as we make a special imprint according to the buyer's wishes on lighters being delivered, excess or short deliveries by up to 3% of the quantity stated in the order confirmation are deemed to be deliveries in compliance with the contract.

3.8 Part deliveries are allowed.

#### **4. Payment**

4.1 All prices are subject to the addition of any value-added tax at the statutory rate applicable at the time.

4.2 Payments must be made in Euro without any deductions within 30 days of the invoice date or less a 2% discount within 14 days to be received.

4.3 Withholding payments because of counter-claims of the buyer or offsetting payments against such claims is permitted only if the counter-claims are undisputed or have been recognised by declaratory judgement. In case of default, we charge interest amounting to 8% points above the basic interest rate.

4.4 Cheques are accepted only on account of payment.

4.5 To examine whether deliveries in the territory of the European Community can be made free of value-added tax, we need the following from the buyer:

- a) the value-added tax identification number,
- b) the destination and
- c) submission of all the documents required as evidence of a tax-exempt delivery within the Community.

In case we have to pay value-added tax subsequently because the buyer furnished incorrect or incomplete information, we are entitled to charge the buyer the amount concerned plus interest.

#### **5. Dispatch and Transfer of Risk**

5.1 Unless otherwise agreed, deliveries are made ex works. The transportation costs are borne by the buyer. In case we exceptionally bear the transportation costs, we determine the shipping route, the mode of dispatch and the forwarder or carrier. Dispatch takes place at the risk of the buyer. The risk, also in the case of part deliveries, passes to the buyer with the handing-over of the merchandise to the forwarder or carrier, but at the latest on leaving the works or warehouse. This also applies to fob or cif transactions and in case we have borne the transportations costs.

5.2 If merchandise is delivered on pallets, these remain our property and must be returned to us carriage free by the buyer.

#### **6. Reservation of Title**

6.1 We reserve the title to all delivered merchandise (reserved merchandise) until fulfilment of all purchase price and all other claims to which we are entitled arising from the active business association with the buyer.

6.2 As long as the buyer is not in default of payment, it is allowed to resell the reserved merchandise in the normal course of business pursuant to its customary business conditions insofar as it agrees reservation of title with its customer, provided that said customer is not an end-user. Any other disposal of the reserved merchandise is impermissible. The buyer must insure the reserved merchandise according to customary commercial practice.

6.3 The claims of the buyer arising from the resale of the reserved merchandise are assigned to us already now by way of security; the assignment is herewith accepted by us. If the value of the security we are granted exceeds the secured claims by more than 20% in total, we are obliged to release the excess security in this respect at the buyer's request. The buyer is revocably authorised by us to collect the claims assigned to us for our account in its own name. This authorisation to collect can be revoked if the buyer does not properly discharge its payment obligations. At our request the buyer is in this case obliged to notify its customers of the assignment to us and to furnish us with the information and documents necessary for safeguarding purposes.

6.4 In case the reserved merchandise is seized in execution or otherwise attached by third parties, the buyer must notify us immediately and instruct the third party of our rights. In case of doubt, the exercise of the reservations of title shall not be deemed to constitute withdrawal from the contract.

## **7. Warranty**

7.1 The buyer must carefully examine the merchandise for defects and completeness immediately on receipt. The delivery shall be deemed approved if a complaint is not registered immediately on arrival of the merchandise at the destination or, if the defect could not be revealed by the examination, registered with us in writing or by telex or facsimile transmission immediately on discovery of the defect. In case of transit damage, a timely complaint must also be registered with the forwarder or carrier.

7.2 In case of all complaints, we are entitled to inspect and examine the merchandise in respect of which the complaint was made in its original condition. If the complaint is justified and made in good time, we will repair the defective merchandise or replace it free of charge at our discretion. In case our repair or replacement delivery fails, the buyer is entitled, at its discretion, to demand a price reduction or annulment of the contract.

7.3 Insofar as the buyer processes, in particular prints on, the merchandise, it must observe our manufacturer's instructions. In case of doubt, it must consult us on the permissibility of the intended processing.

## **8. Liability**

8.1 Save as provided in Sentence 2, our contractual and statutory liability is restricted to intent, gross negligence or violation of main contractual obligations. We are liable for the slightly negligent conduct of our legal representatives, officers, persons employed in the performance of our obligations and vicarious agents only insofar as a cardinal obligation is infringed.

8.2 Our liability for grossly negligent conduct is restricted to typical and foreseeable damage unless a cardinal obligation is infringed. This restricted liability also applies to claims for compensation because of consequential damage caused by a defect, in case an assured characteristic is missing, if assuring the characteristic is intended to protect the customer against the risk of such damage.

8.3 The exclusion or restriction of liability also applies to any personal liability of our legal representatives and employees.

## **9. Warnings**

Legislation obliges us to warn the consumer in a suitable manner of hazards arising from the products. For this reason warning instructions are attached to each sales pack. The buyer, if a dealer, undertakes to use these warning instructions according to the intended purpose and, in case of non-compliance, to release us from any third-party claims.

## **10. Graphic Design/Copyright**

10.1 Insofar as the merchandise being delivered is printed according to our patterns and designs, these remain our intellectual property and must not be imitated, copied or made available to rival companies. This also applies as regards graphic designs for our merchandise that we produce exclusively for the buyer. Printing films, sketches etc. always remain our property.

10.2 Insofar as the buyer wishes us to supply a graphic design, in particular insofar as we print company logos, marks, protected designs or similar on our merchandise at the buyer's request, we are entitled to use relevant patterns as references.

## **11. General**

11.1 The place of performance and venue shall be Mönchengladbach.

11.2 The relationship between us and the buyer is governed by the law of the Federal Republic of Germany. The uniform laws on the international sale of goods and the formation of contracts for the international sale of goods do not apply, nor does the UN convention relating to the sale of goods.

11.3 If a provision of the present conditions is legally invalid or impracticable wholly or in part, this shall not affect the validity of the other provisions. The same applies in case of an omission. The invalid or impracticable provision shall be replaced or the omission remedied by an appropriate ruling that complies as closely as possible with the economic purpose of the original ruling.

11.4 We expressly point out that, in connection with the delivery, we store and process the personal data we obtain on the basis of the business relationship with the buyer.

