

General Terms and Conditions

§ 1 APPLICABILITY - PROTECTIVE CLAUSE

- (1) Our deliveries, services and offers shall be issued only under these conditions of trade.
- (2) wheyco herewith object to purchaser's general business conditions explicitly. This will also apply in cases involving circumstances not covered by these conditions.

§ 2 CONCLUSION OF CONTRACTS

- (1) All offers are without engagement.
- (2) Concluding of contracts and other agreements, including any modifications thereof shall be of no effect unless confirmed by us in writing.
- (3) Oral ancillary agreements do not exist.

§ 3 DELIVERY, FORCE MAJEURE

- (1) Delivery dates or deadlines that have been stipulated as either binding or not binding must be provided in writing. Proper, timely and complete deliveries by other suppliers outside the sphere of our influence are prerequisite to delivering and observing deadlines. Delivery dates are intended ex factory.
- (2) Partial deliveries are permissible.
- (3) If we are hindered in meeting our obligations in timely manner, as in the case of force majeure or other unforeseen and extraordinary circumstances beyond our control, such as but not limited to, fire, explosions, difficulties in supply materials for production, interruptions in production, strikes, lockouts, war, rebellion, lack of transportation means, intervention by authorities, problems with electricity, gas, water or other media, interruptions of telecommunication, break down of information- and control-systems, break downs of whatever kind connected to the malfunction of electronic systems (for example the systems are not able to process change of dates etc. (Also if they occur with our suppliers), the delivery period will be extended to a reasonable extent. Should the delivery or service be impossible or unreasonable due to the specified circumstances, we will be freed of our delivery obligations. In case of delays lasting more than two months, the purchaser is entitled to withdraw from the contract. Claims of the purchaser for damages or compensations are subject to the restrictions imposed by the provisions of Section X. We can refer to the aforementioned circumstances, if we inform the purchaser of them promptly.
- (4) After a four-week delay in meeting a non-binding delivery deadline or period, the purchaser can make a written request for the delivery within a reasonable period of time. This request is ground for our default. If the delivery does not occur within the purchaser's newly set time limit, the purchaser should be entitled to withdraw from the contract. In this case we are liable according to Section X.
- (5) If the purchaser suffers loss or damage as a result of delayed delivery for which we are responsible, no more than 5 % of the gross value of the affected part of the contract may be claimed. This limitation of our liability shall not apply to default of delivery by deliberate acts or gross negligence by us or if by the default of delivery to be answered by us life, body or health are injured.

§ 4 TRANSFER OF TITLE, DISPATCH

- (1) We will take care that the shipping/ dispatch to the purchaser will be carried out in the name, at the cost and at the risk of the purchaser. The same will apply in case – due to a separate agreement – we will have to bear the costs of the shipping/ dispatch and/ or will insure for the shipping/ dispatch. If the purchaser is responsible for a delayed shipping, transfer of title is effective upon announcing readiness for dispatch. Storage costs following transfer of title are born by the purchaser.
- (2) We are entitled but not obliged to insure deliveries in the name and for the account of the purchaser.
- (3) The aforementioned regulations also apply to FOB- and CIF-trade.
- (4) Any complaints concerning loss or damages by shipping have to be made in writing on the quitance, which has to be given to the forwarder/ dispatcher. Further, any losses or damages have to be made to us no later than one week after delivery. Hidden faults are to be reported immediately after the discovery.

§ 5 PRICES, COUNTERCLAIMS, DEFAULT, ALLOCATIONS

- (1) Unless otherwise agreed, our prices are made out in Euro ex factory or distribution centre plus current statutory value added tax. Additional costs such as packaging expenses, dispatch, transport, etc. are born by the purchaser. Our invoices are deemed to be admitted, if purchaser does not object in writing 30 days of the invoice date.
- (2) The purchaser has only a right of retention or a right of setoff if the counterclaims are recognised by a final and absolute court judgement or undisputed.
- (3) When the purchaser is in default, we may demand interest on the sum due of 10 % above the current base rate. If the purchaser is a businessman, default interest is

payable on the claim from the due date at 10 % above the current base rate.

§ 6 COOPERATION OF THE PURCHASER

Should explanatory documents be necessary for allocations (e.g. for customs payments or reimbursements), the purchaser must provide them in a timely manner. If the requisite documents are not furnished or are not provided in due course by the purchaser, the stipulated price will increase in accordance with the amount of the unobtained allocations. Costs due to changes in import regulations, EC-ordinances or official regulations shall be born by the purchaser.

§ 7 DETERIORATION OF THE PURCHASER'S FINANCIAL SITUATION (§ 321 BGB - GERMAN CIVIL CODE)

In case of failure of the purchaser to comply with our request for prepayment or security (§ 321 BGB), we are entitled, after a reasonable grace period, to withdraw from the contract or to demand compensation for damages due to non-performance.

§ 8 RETENTION OF TITLE

- (1) We will retain titles to goods delivered until the purchaser has paid the purchase price for the proprietary goods in full. Further, the goods will remain our property until the purchaser has fully paid all our claims founded on our business connection with the purchaser and due by the purchaser at the moment of the conclusion of the agreement. Furthermore, we retain our titles to goods delivered until the purchaser has fulfilled also our claims arising in future against the purchaser.
- (2) As long as proprietary rights apply, the purchaser shall insure the delivered goods against loss, depreciation, fire, theft, perils of transportation and water damage.
- (3) The purchaser is not entitled to pledge our goods subject to retention of title to third parties or to make an assignment by way of security or to assign or pledge the rights of expectancy of the goods subject to retention of title.
- (4) In case of any handling or processing of the proprietary goods, we are considered as manufacturer in accordance with article 950 BGB and are not obliged remuneratively or in any other way. We also retain titles to goods at all times and at every stage of processing. In processing other goods not owned by us, we are entitled to joined proprietorship with the purchaser of the new item. This shall be in the proportion of the invoice value of our proprietary goods to the other manufactured goods at the time of processing. The same provisions for proprietary goods apply when new items originate through processing. They are regarded as proprietary goods in terms of the conditions.
- (5) The purchaser is only entitled to resell the proprietary goods in the proper course of his business. The purchaser herewith assigns to us his claims from resale including any credit balance in running account. We hereby accept this assignment. The rights assigned shall serve as collateral for our debts in the same amount as the proprietary goods. The purchaser is authorised to resell goods, if it can be guaranteed that the claims resulting there from will pass over to us. If the purchaser fulfils the preconditions for an obligatory bankruptcy petitions his authorisation of sale applies only if returns from the resale are paid to a special account.
- (6) Otherwise, the purchaser is authorised to collect our debts until our revocation. We will make use of the rights of revocation, if the purchaser does not properly meet his business obligations or if circumstances capable of reducing greatly the purchaser's credit position come to our attention. In this case we may request that the purchaser notifies us of any debts, respective debtors and information required for collection of the debts and informs the debtor of the assignment. Documents pertaining to this matter shall be handed over to us, and we shall be entitled to inform the debtors of the assignment of rights. After the extinction of the authorisation to collect our debts all money paid to the purchaser on the rights/claims assigned to us must be collected by him on a trust basis. He must either immediately pay out the collected money to us or accumulate the money on a fiduciary account with designation "Fiduciary account for wheyco GmbH". The purchaser herewith agrees that the money so collected is our property and assigns the claims/rights related to the above mentioned fiduciary account to us. We herewith accept this assignment.
- (7) Should the value of the existing securities exceed the guaranteed claims by more than 10 %, we are obliged, at the purchaser's request, to release securities as we choose.
- (8) Should proprietary rights not be legally effective according to the laws of the country in which the proprietary goods are located, the proprietary rights of that country shall apply which approximately most closely correspond to the proprietary rights as here contracted. If any proceedings or declarations by the purchaser are required with respect to this, the purchaser is obliged to act accordingly upon our request.
- (9) If the purchaser is in default of payment the goods on which we retain titles, they must be handed out to us by the purchaser on our request; independently of a withdraw from the contract by us. The same shall apply if the financial situation of the purchaser is deteriorating significantly. The request for handing out and the taking back of the goods cannot be considered as a withdraw from the contract. After taking back the goods we are entitled to make use/ sell the goods at our discretion. We will accredit the purchaser the amount we will realise by selling the goods. However, the costs for the taking back, working off and selling of the goods will be deducted from the amount we recover from the sale of the goods.

§ 9 WARRANTIES

- (1) Upon delivery the purchaser is obliged, at his own expense, to examine the goods delivered properly and without delay and to inform us immediately in writing of any defects, wrong deliveries or short falls in quantity. A 48-hour time limit after receipt of the goods or discovery of the defects shall apply. Hidden defects must be reported to us in writing immediately after discovery. We must be given the opportunity to inspect the goods claimed defective in an unaltered condition at the site. The purchaser is solely obliged to determine the utility of goods and whether legal provisions have been observed, particularly in the case of laws governing food.

- (2) Warranty claims are included in case the difference between the quality of the delivered products and the quality agreed upon is insignificant. Warranty rights of the purchaser are generally limited to a claim to rectification or replacement. We have the right to select one of these. If the rectification or replacement is a failure or if it does not lead to success within a reasonable period, the purchaser is entitled at his option either to cancel the contract or to reduce the remuneration. We are entitled to carry out a reasonable – at least three - number of rectification attempts or replacements.

- (3) Warranty claims against us will become time-barred one year from the date of delivery.

- (4) The above warranty limitations and restrictions in Section IX.1. to IX.3. do not apply if the warranty claims are based on deliberate acts or gross negligence on the part of us, our officers, employees or our vicarious agents. Further they shall not apply if our fault or the fault of our officers, employees or vicarious agents causes injury to life, body or health. More extensive claims, especially claims for damages are subject to the restrictions imposed by Section X. Excluded is our liability for collateral damages.

§ 10 LIABILITY

- (1) The following exclusions and limitations also apply to claims under tort as far as these compete with contractual claims.

- (2) We are not being liable for loss or damage of any kind whatsoever.

- (3) This exclusion does not apply

- To loss or damage which we cause deliberately or by gross negligence;

- In cases of minor negligence to loss or damage based on injury to life, body or health or to loss or damage based on our breach of fundamental contractual obligations.

- (1) In the event of a minor breach of fundamental contractual obligations our liability – except for damage to life, body or health – is limited to typical loss or damage foreseeable for us at the time of the conclusion of the contract or the breach of the obligation.

- (2) If the purchaser is a businessman/ entrepreneur claims for damages on the part of the purchaser due to minor negligence by us are excluded unless legal action is brought within a period of three months after we or our insurer has rejected the claim, thereby referring to the three-month period.

- (3) The exclusions and limitations in Section X.1 to X.4 also apply to our liability for our officers, employees and vicarious agents and to the personal liability of our officers, employees and vicarious agents.

- (4) The above exclusions and limitations under Section X.1 to X.5 do not apply to claims under the Product Liability Act insofar as mandatory liability is provided for.

§ 11 PLACE OF PERFORMANCE, JURISDICTION, APPLICABLE LAW

- (1) Place of performance – unless not otherwise agreed upon – for all rights and obligations arising from business (payment and delivery) is Hamburg.

- (2) If the purchaser is a businessman, a legal person under public law or a fund under public law, place of jurisdiction is Hamburg. Nevertheless we shall be entitled to bring actions at the place of jurisdictions of the purchaser.

- (3) The business relation between the purchaser and us is governed by German law with exclusion of the provisions of the International Private Law and the UN Convention on Contracts for the international Sale of Goods (CISG).

§ 12 SEVERABILITY

- In the event that one or more provisions of this contract are or become invalid, the validity of the contract shall not be affected thereby. The invalid or unenforceable provision shall be replaced by a statutory provision. In no case the provision in these conditions will be replaced by a provision in the general terms and conditions of the purchaser.