



STANDARD TERMS AND CONDITIONS OF SUGATSUNE EUROPE GMBH FOR THE SALE OF GOODS

1. PREAMBLE

- 1.1 These Standard Terms and Conditions for the Sale of products and goods of Sugatsune Europe GmbH ("**Goods**") shall exclusively apply, save as varied by express agreement accepted in writing by both parties.
- 1.2 The offer, confirmation of order, order acceptance of sale of any Goods covered herein is conditioned upon the terms contained in this instrument. Any terms and conditions of the buyer shall not apply and are excluded. They shall not become part of the agreement between the parties even if the seller did not expressly object the respective terms and conditions.
- 1.3 These conditions shall govern any future individual contract of sale between the seller and the buyer to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the buyer.
- 1.4 Any typographical, clerical or other error or omission in any sales documentation, quotation, price list, acceptance of offer, invoice or other document of information issued by the seller shall be subject to correction without any liability on the part of the seller.
- 1.5 The provisions of these Standard Terms and Conditions extend to standard contract conditions which are used in contract with a merchant in the course of business only.

2. ORDERS AND SPECIFICATIONS

- 2.1 No order submitted by the buyer shall be deemed to be accepted by the seller unless and until confirmed in writing by the seller or the seller's representative within 21 days after submittal.
- 2.2 The quantity, quality and description of and any specification for the Goods shall be those set out in the seller's standard product brochures and in the seller's quotation (if accepted by the buyer) or the buyer's order (if accepted by the seller).
- 2.3 Irrelevant technical changes to the Goods due to the seller's product development and production circumstances, including but not limited to product dimensions and materials, are subject to change without prior notice.
- 2.4 The buyer shall be responsible to the seller for ensuring the accuracy of the terms of any order submitted by the buyer to enable the seller to perform the contract in accordance with its terms.
- 2.5 The seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory requirements.

3. PRICE OF THE GOODS

- 3.1 The price of the Goods shall be the seller's quoted price or, where no price has been quoted, the price listed in the seller's published price list current at the date of acceptance of the order.
- 3.2 The seller reserves the right, by giving notice to the buyer at any time before delivery, to increase the price of the Goods to reflect increase in the cost to the seller which is due to any

factor beyond the control of the seller (such as foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of materials or other costs of manufacture) or any change in delivery dates.

- 3.3 Except as otherwise stated under the terms of any quotation or in any price list of the seller, and unless otherwise agreed in writing between the buyer and the seller, all prices are given by the seller on an EXW (Incoterms 2010) basis.
- 3.4 The price is exclusive of any applicable value added tax, which the buyer shall be additionally liable to pay to the seller.

4. TERMS OF PAYMENT

- 4.1 Payment shall be effected by wire transfer to the bank account of seller (or an affiliated company of seller) indicated in the seller's order quotation or confirmation/ the seller's invoice only; no cheque or bill of exchange will be considered as fulfilment of the payment obligation.
- 4.2 Payment is deemed made on the date when it is credited to the bank account of the seller, in the amount received.
- 4.3 If the buyer fails to make any payment by the due date, i.e. (i) immediately after order acceptance, or (ii) by the due date indicated on the seller's invoice or otherwise, whichever date is later, then, without prejudice to any other right or remedy available to the seller, the seller shall at his discretion be entitled to:
- rescind (*zurücktreten*) the contract or suspend any further deliveries to the purchaser; or
 - charge the buyer interest on the amount unpaid, at the rate of 9 percentage points above the base lending rate of Section 247 BGB (German Civil Code) from then being valid per annum, until payment in full is made. The buyer shall be entitled to prove that the delay of payment caused no or little damage only. The right to claim further damage remains unaffected.

5. DELIVERY

- 5.1 Unless otherwise agreed in the order documentation, "**Delivery**" of the Goods shall be deemed to be the time when the Goods have been made available for shipment to the buyer at the seller's premises.
- 5.2 For tax-free shipments outside of Germany, upon request the buyer is obliged to supply evidence of removal of the Goods from Germany. If sufficient evidence cannot be supplied, the seller reserves the right to charge the buyer for VAT according to German law.
- 5.3 Where delivery of the Goods is to be made by the seller in bulk, the seller reserves the right to deliver up to 3% more or 3% less than the quantity ordered without any adjustment in the price, and the quantity so delivered shall be deemed to be in the quantity ordered.
- 5.4 The seller reserves the right to make partial deliveries with due consideration of the interests of the buyer.
- 5.5 Times set for supplies can only be observed if all documents to be supplied by the buyer, necessary permits and releases are received in time and if agreed terms of payment and other obligations of the buyer are fulfilled. Unless these conditions are fulfilled in time, times set shall be extended appropriately; this shall not apply where the seller is responsible for the delay.
- 5.6 If non-observance of the times set is attributable to force majeure (Clause 9.6 below), such time shall be extended accordingly.

- 5.7 If the seller is responsible for the delay and the buyer demonstrably suffered a loss there from, the buyer may claim compensation as liquidated damages of 0.5 per cent. for every completed week of delay, but in no case more than a total of 5 per cent. of the price of that part of the supplies which because of the delay could not be put to the intended use.
- 5.8 Buyer's claims for damages due to delayed supplies as well as claims for damages in lieu of performance exceeding the limits specified above shall be excluded in all cases of delayed supplies even upon expiry of a time set to the seller to effect to the supplies. This shall not apply in cases of mandatory liability based on intent, gross negligence, or due to injury of life, body or health. Cancellation of the contract by the buyer based on statute shall be limited to cases where the seller is responsible for the delay. The above provisions do not imply a change in the burden of proof to the detriment of the buyer.
- 5.9 At the seller's request the buyer shall declare within a reasonable period of time whether the buyer rescinds the contract due to the delayed supplies or insists on the supplies to be carried out.
- 5.10 If dispatch or shipment is delayed at the buyer's request by more than one month after notice of the readiness for dispatch was given, the buyer may be charged, for every month commenced, storage costs of 0.5 per cent of the price of the items of the supplies, but in no case more than a total of 5 per cent. The parties to the contract may prove that higher or, as the case may be, lower storage costs have been incurred.

6. TRANSFER OF RISKS

Risk of damage to or loss of the Goods shall pass to the buyer as follows:

- in the case of Goods to be delivered otherwise than at the seller's premises, at the time of delivery or, if the buyer wrongfully fails to take delivery of the Goods, the time when the seller has tendered delivery of the Goods;
- in the case of Goods to be delivered at the seller's premises ("ex works", Incoterms 2010) at that time when the Goods are made available for collection and the seller notifies the buyer that the Goods are available for collection.

7. RETENTION OF TITLE

- 7.1 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these conditions, the property in the Goods shall not pass to the buyer until the seller has received payment in full of the price of the Goods and all other Goods agreed to be sold by the seller to the buyer for which payment is then due.
- 7.2 If the buyer fails to comply with terms and conditions of the contract - in particular in the case of payment arrears (*Zahlungsverzug*) - the seller shall be entitled to request payment within an appropriate period of time and - once such period has lapsed without full payment - to retake and sell or otherwise deal with (*verwerten*), or dispose (in particular attach (*pfänden*)), of all or any part of the Goods in which title remains vested in the seller ("**Reserved Goods**"). To the extent the seller retakes, or sells, deals with, or disposes of Reserved Goods, the seller shall be deemed to have rescinded the contract. The buyer shall bear the transportation costs of retaken, sold, dealt-with, or disposed-of Reserved Goods. The proceeds from any sale, dealing with, or disposal of the Reserved Goods shall reduce the amount owed by the buyer to the seller, provided that the seller shall be entitled to reduce the proceeds by reasonable costs of the sale, deal, or disposal.
- 7.3 Until such time as the property in the Reserved Goods passes to the buyer, the buyer shall hold the Reserved Goods as the seller's fiduciary agent, and shall keep the Reserved Goods properly stored, protected and insured.

- 7.4 Until that time the buyer shall be entitled to resell or use the Reserved Goods in the ordinary course of its business, but shall account to the seller for the proceeds of sale or otherwise of the Reserved Goods including insurance proceeds, and shall keep all such proceeds separate from any moneys or properties of the buyer and third parties.
- 7.5 If the Reserved Goods are processed or reshaped by the buyer and if processing is done with Reserved Goods that seller has no property in, such processing or reshaping shall be done on behalf of the seller, and the seller shall become co-owner of the Reserved Goods. The same shall apply if seller's Reserved Goods are completely reshaped and mixed with other Goods.
- 7.6 If third parties seize or otherwise enforce rights into (*vollstrecken in*) the Reserved Goods, the buyer shall immediately notify the seller in order to enable the seller to seek a court injunction in accordance with § 771 of the German Code of Civil Procedure (*Zivilprozessordnung – ZPO*). If the buyer fails to do so in due time he will be held liable for any damages caused.
- 7.7 The seller shall on demand of the buyer release any part of the collateral if the value of the collateral held in favour of the seller exceeds the value of the claims being secured. The seller shall have sole discretion in its decision to release those parts of the collateral suitable for him.

8. CLAIMS BASED ON DEFECTS

8.1 (Defects as to quality)

All items delivered by the seller shall be free from defects as to quality. Defects as to quality (*Sachmängel*; hereinafter: "**Defects**") are given if the Goods do not feature the contractually agreed characteristics (*Beschaffenhheitsangaben*) or is not suitable for the contractually agreed use. Defects of minor relevance remain unconsidered.

The buyer shall examine the Goods and notify in writing any Defects as required by German Law (§§ 377 of the German Commercial Code) and in doing so check every delivery in any respect.

The seller's responsibility for Defects shall be restricted as follows:

- the seller shall not be liable in respect of any Defects arising from any design or specification supplied by the buyer;

- the seller's liability does not extend to parts, materials or equipment manufactured by or on behalf of the buyer unless such liability is covered by a warranty given by the manufacturer to the seller; specifications made in documents, however, do not describe any warranties by the seller; warranties have to be in writing and have to be indicated expressly.

The seller's liability does not cover Defects in or damage to the Goods which are due to improper installation or maintenance, misuse, neglect or any cause other than ordinary commercial application.

8.2 (Claims based on Defects)

Where any valid claim in respect of any Goods which is based on any Defects of the Goods is notified to the seller in accordance with the conditions of this Clause 8, the seller shall first be given the opportunity to supplement its performance (*Nacherfüllung*) within a reasonable period of time. For supplementing its performance the seller at the seller's sole discretion shall be entitled to either replace the Goods free of charge (supplementary delivery) or repair the Goods. If the seller is neither ready nor able to either repair or replace the Goods within a reasonable period of time the buyer shall be entitled at the buyer's sole discretion to claim for a reduction of price (*Minderung*) or the cancellation of the contract (*Rücktritt*).

Next to the remedies set out above, the buyer shall be entitled to ask for compensation in lieu of performance, or reimbursement of its expenditure in accordance with the provisions of Clause 9 below ("Limitation of Liability") in the event that fault can be attributed to the seller.

If the supplementary performance of the seller is carried out by supplementary delivery, the buyer shall return the Goods first delivered within 30 days. Otherwise the seller is entitled to invoice the purchase price for the supplement Goods.

Any claims based on Defects are subject to a limitation period of twelve months, which runs from the date of delivery.

9. LIMITATION OF LIABILITY

9.1 The seller shall only be liable for damages claims, irrespective of their legal nature, including, in particular, breach of contractual duty or tort, in the following cases:

- a) wilful misconduct;
- b) death or personal injury;
- c) to the extent the seller (i) has guaranteed a certain quality of goods or the success of a service, and/or (ii) have accepted the risk of the non-availability of certain goods, and/or (iii) is subject to any product liability claims according to the German Product Liability Act (*Produkthaftungsgesetz*);
- d) if in other cases legal provisions provide for liability regardless of negligence or fault;
- e) if, in case of a breach of a miscellaneous contractual duty within the meaning of Sec. 241 Para. 2 of the German Civil Code (*sonstige Pflicht im Sinne des § 241 Abs. 2 des Bürgerlichen Gesetzbuchs – BGB*), the buyer can no longer be expected to accept the seller's performance of its contractual obligation;
- f) gross negligence; and/or
- g) to the extent liability has not already occurred in accordance with section 9.1 a) to f), in case of a breach of a Material Duty (*wesentliche Vertragsverletzung*);

Apart from that, the seller's liability is excluded. A "Material Duty" within the meaning of the present agreement shall be (i) any contractual duty protecting an essential contractual position of the buyer, the granting of which position is an essential aim and purpose of the agreement, and/or (ii) any contractual duty the fulfilment of which is a basic requirement enabling the proper performance of the agreement in the first place and in the fulfilment of which the buyer may usually trust.

9.2 The seller may only be held liable for the non-availability of goods (section 9.1 c)), if it has expressly "accepted the risk for the non-availability" by written agreement.

9.3 In the case of section 9.1 d) to g), the seller shall only be liable for the typical and foreseeable damage.

9.4 The exclusions or limitations of liability, pursuant to sections 9.1 to 9.3, shall also apply to the same degree in relation to any acts of the seller's legal representatives, executive and non-executive employees and other vicarious agents as well as subcontractors. The seller does not assume any liability for employees or other auxiliary persons who are engaged in the performance of its contractual duties by the buyer and the buyer shall indemnify the seller against all expenses and claims by any third party for damages of such persons. This shall not apply in case these persons are deemed to be auxiliary persons of the seller.

9.5 The aforementioned provisions shall not be interpreted as a shift of the burden of proof.

- 9.6 The seller shall not be liable for failure to fulfil any of its obligations in case the failure is caused by circumstances beyond its control (force majeure). During force majeure the seller's obligation to fulfil its obligations shall be suspended. In the event that the performance of the seller's contractual obligations is made impossible by force majeure for a period longer than thirty days, each party shall be entitled to withdraw from the agreement without judicial intervention and without any obligation whatsoever to compensate the damages of the buyer.

10. APPLICABLE LAW AND VENUE

- 10.1 These Terms and Conditions shall be governed by the laws of the Federal Republic of Germany (excluding the Convention on Contracts for the International Sale of Goods - CISG).
- 10.2 Exclusive place of jurisdiction for all disputes arising out of or in connection with the present Terms and Conditions and/or an agreement governed by the present Terms and Conditions shall be Landgericht Düsseldorf, Germany.