

## General Conditions of Sale – sl-piping GmbH (Dec 5<sup>th</sup> 2011)

**Note: This is a translation of the German version ('Allgemeine Verkaufsbedingungen'). In cases of uncertainty or conflict, the German version shall prevail.**

### I. Application, Offers

1. These General Conditions of Sale (Conditions) shall apply to all present and future contracts with commercial buyers, with public legal entities as well as public trusts in regard to deliveries and other services, including contracts relating to the supply and manufacture of non fungible goods. In case of direct sales ("Streckengeschäfte"), the producer's conditions as laid down in its price list shall apply in addition to these conditions. The Buyer's purchase conditions shall not be binding even if we do not expressly object to them again after their receipt.

2. Our offers are not binding to us. Oral agreements, promises, assurances and guaranties made or given by our sales staff shall not be binding unless confirmed by us in writing, this demand being met also in cases of telefax and e-mail transmission.

3. Any trade terms shall, in cases of doubt, be interpreted according to the Incoterms as amended from time to time.

### II. Prices

1. Unless otherwise agreed to, only such prices and terms shall apply as contained in our price lists effective at the time when the contract is concluded.

2. Should taxes or other extraneous expenses included in the agreed upon price change or be added later than four weeks after the conclusion of the contract, we shall be authorized to modify the price relative to the respective change.

### III. Payment and Set-Off

1. Unless otherwise agreed or stated in our invoices, payment shall be made without cash discounts immediately so that we can dispose of the sum on the due date. Any payment transfer costs shall be borne by the Buyer. The Buyer may retain or set off any counterclaims only in so far as his claims are undisputed or have become legally binding.

2. Should the Buyer default in payment, he will be liable to pay interest at 8% points above the basic interest rate, unless higher rates have been agreed upon. We reserve the right to claim additional damages resulting from late payment.

3. The Buyer will be in default of payment at the latest 10 days after payment has been become due regardless of whether we have sent a reminder.

4. Should it become evident after the conclusion of the contract, that payment is jeopardized by the Buyer's lack in financial means, or should the Buyer be in default with a considerable portion of the amount due or should other circumstances arise which show a material deterioration in the Buyer's financial position after the conclusion of the contract, we shall be authorized to make use of rights under § 321 BGB (German Civil Code) and to make due any and all of our non statute-barred accounts receivable resulting from the same legal relationship.

5. Any agreed upon cash discount always relates to the invoiced value excluding freight and will only be granted if and in so far as the Buyer has completely paid all payables due at the time of the discount. Unless otherwise agreed to discount periods shall begin with the date of the invoice.

### IV. Delivery Times

1. Our commitment to deliver is subject to our correct and timely self-delivery unless we are responsible for the deficient or late self-delivery.

2. Any confirmation as to delivery times shall only be approximate. Delivery times shall commence with the date of our order confirmation and are subject to the timely clarification of any details of the order as well as of the fulfillment of any of the Buyer's obligations, e.g. to produce official certifications, to provide letters of credit and payment guarantees or to pay agreed installments.

3. Any agreed delivery time shall be considered to be met if and in so far the goods have left the works or our warehouse at such time or date. If and in so far the goods fail to be dispatched at the agreed time for reasons not attributable to us, the agreed delivery time shall be considered to have been met at the day on which the goods are notified to be ready for dispatch.

4. If the delivery is delayed by our fault, the Buyer, after setting a reasonable grace period, may withdraw from the contract if and in so far as the goods have not been delivered by this date. Damage claims for delay and non-performance may be made in accordance with clause XI of these Conditions.

5. Delivery times are being prolonged at a reasonable extent for measures relating to labor disputes, particularly stoppage and lockout as well as the occurrence of unforeseeable hindrances that are not influenceable by us in so far as these hindrances have a significant influence on the manufacture or delivery of the goods. The aforesaid shall also apply if these circumstances occur to our suppliers. We will immediately notify the Buyer of these circumstances. These rules apply to delivery dates accordingly. If the fulfillment of the contract is unreasonable for either party, a withdrawal from the contract is possible.

### V. Retention of Title

1. All goods delivered to the Buyer shall remain our property (Reserved Property) until all of the Buyer's accounts resulting from the business relationship with him, in particular any account balances have been settled. This condition shall apply to any future as well as any conditional claims including accepted notes and such cases where the Buyer will affect payments on specifically designated claims. As soon as the Buyer has settled his accounts with us in full, he shall obtain title to those goods which were delivered to him before such payment was effected.

2. With regard to processing or manufacturing of the Reserved Property, we shall be deemed to be manufacturer

within the meaning of § 950 BGB (German Civil Code) without committing us in any way. The processed or manufactured goods shall be regarded as Reserved Property within the meaning of clause V/1 of these Conditions. If the Buyer manufactures, combines or mixes the Reserved Property with other goods we shall obtain co-ownership in the new goods in proportion to the invoiced price of the Reserved Property to the invoiced price of the other goods. If, by such combining or mixing, our ownership expires, the Buyer herewith transfers to us any rights which the Buyer will have in the new stock or goods in proportion to the invoiced price of the Reserved Property, and he will keep them in safe custody free of charge. Our co-ownership rights shall be regarded as Reserved Property within the meaning of clause V/1 of these Conditions.

3. The Buyer may resell the Reserved Property only within the normal course of his business in accordance with his normal business terms and provided he is not in default of payment and provided also that any rights resulting from such resale will be transferred to us in accordance with clause V/4 through V/6 of these Conditions. The Buyer shall not be entitled to dispose of the Reserved Property in any other way.

4. The Buyer hereby assigns to us any claims resulting from the resale of the Reserved Property. Such claims shall serve as our security to the same extent as the Reserved Property itself. If the Reserved Property is resold by the Buyer together with other goods not purchased from us, then any receivables resulting from such resale shall be assigned to us in the ratio of the invoiced value of the other goods sold by the Buyer. In the case of resale of goods in which we have co-ownership rights according to clause V/2 of these Conditions, the assignment shall be limited to the part which corresponds to our co-ownership rights.

5. The Buyer shall be entitled to collect any receivables resulting from the resale of the Reserved Property. This right shall expire if withdrawn by us, at the latest if the Buyer defaults in payment; fails to honor a bill of exchange; or files for bankruptcy. We shall exert our right to revocation only if and in so far as it becomes evident after the conclusion of the contract that payment resulting from this contract or from other contracts is jeopardized by the lack of the Buyer's ability to pay. The Buyer shall – upon our request – immediately inform his customers of such assignment and to forward to us any information and documents necessary for collection.

6. The Buyer shall immediately inform us of any seizure or any other attachment of the Reserved Property by a third party. He shall bear any costs necessary to suspend such seizure or attachment or removal of the Reserved Property, if and in so far as such costs are not borne by a third party.

7. Should the Buyer default in payment or should he fail to honor a draft we shall be entitled to take back the Reserved Property, to enter, for this purpose, the Buyer's premises and to sell the Retained Property best possible by crediting the proceeds to the purchase price. The same shall apply should, after the conclusion of the contract, it become evident that payment resulting from this contract or from other contracts is jeopardized by the Buyer's lack of ability to pay. If we take back the Reserved Property, this shall not be regarded as withdrawal from the contract. The statutory regulations of the 'Insolvenzordnung' (= German Insolvency Act) shall remain unaffected.

8. Should the total invoiced value of our collateral exceed the amount of the secured receivables including additional claims for interest, costs, etc. by more than 50 %, we shall – upon the Buyer's request – release pro tanto collateral at our discretion.

## VI. Grades, Sizes and Weight

1. Grades, sizes and classification of the goods shall be determined in accordance with the agreed standards or, in absence of such an agreement, with the DIN and EN-standards effective at the time of the conclusion of the contract, or in absence of such standards with trade practice and usage. Any reference to such standards and to similar rules, to works certificates and to similar inspection documents as well as reference to grades, classification, sizes, weights or usage of the goods shall not be regarded as warranty of fitness for a special purpose nor as a guarantee. The same shall pertain to declarations of conformity and to any related marks such as CE and GS.

2. The weight of the goods shall be determined on our or our suppliers' scales and shall be evidenced by the presentation of the pertinent weight check. Where provided by law, the weight may be determined without weighing in accordance with the standards. We may calculate the weight without weighing on the basis of the applicable standards ('theoretical weight') plus 2 ½ % ('commercial weight'). Any indications given in the delivery notes as to the number of pieces, bundles etc. are not binding, if and in so far as the goods are invoiced by weight. Where, in accordance with trade usage, the goods are not weighed piece by piece, the total weight of the delivery shall prevail. Any difference with regard to the calculated weight of the single pieces shall be proportionally allocated to them.

## VII. Testing and Inspection

1. Where testing and inspection of the goods has been agreed upon, the goods must be inspected in the mill or in our warehouse immediately after the Buyer has been informed that the goods are ready for dispatch. The Buyer shall bear his personal inspection costs, whereas the costs of inspection will be invoiced to him in accordance with our price list.

2. Should, through no fault of ours, an agreed upon inspection of the goods fail or be delayed or be incomplete, we shall be authorized to dispatch the goods without prior inspection or to store them at the Buyer's expense and risk and to invoice the goods to him.

## VIII. Dispatch, Passing of Risk, Packaging, Partial Delivery

1. We shall be entitled to choose the route and mode of dispatch as well as the forwarding agent and the carrier.

2. The Buyer shall immediately request delivery of those goods which have been notified to him as ready for dispatch. Otherwise we are entitled, upon reminder, to ship such goods at the Buyer's cost and risk or to store them at our discretion and to invoice them to the Buyer.

3. Can, by reasons not attributable to us, the goods not be shipped or will it become substantially difficult to ship the

goods via the designated route or to the designated place within the designated time, we reserve the right to ship them via a different route or to a different place. Any additional costs will be borne by the Buyer. In such cases we will ask the Buyer for his prior comments.

4. In all transactions, including freight prepaid and freight-free deliveries, the risk of loss or damage to the goods shall pass to the Buyer at the time where we hand them over to the forwarding agent or to the carrier, at the latest with their departure from our warehouse. We will buy insurance only if requested to by the Buyer and at his cost. The Buyer shall unload the goods at his cost.

5. The goods will be delivered unpacked and not be protected against rust. Only where so provided by trade usage will the goods be packed. Any package, protection and/or transport device will be supplied according to our experience and at the Buyer's cost. We will take back such devices only at our warehouse. We will not bear any costs for their return transport or disposal.

6. We shall be entitled to make partial deliveries at reasonable quantities. We may also exceed or reduce the agreed quantities as appropriate. Where quantities are indicated as 'circa', we may exceed or fall below agreed quantity up to 10 %.

## IX. Callable and Continuous Deliveries

1. Where the contract provides for continuous deliveries, the Buyer shall divide the quantities and grades for the goods into approximately equal monthly shipments. Otherwise we shall be entitled to specify them at our own fair and just discretion.

2. Where the single calls for delivery exceed the total contractual quantity, we shall be entitled, yet not committed, to deliver the surplus quantity and invoice it at the prices applicable at the time of the call or the delivery.

## X. Warranty Provisions

1. The Buyer shall immediately notify us in writing of any defects of the goods, at the latest seven days after their delivery. Defects which, even upon careful inspection, cannot be discovered within this period must be notified to us in writing immediately upon their discovery, at the latest before the elapse of any agreed or statutory warranty period. In such cases the Buyer must suspend any processing or manufacturing of the goods.

2. If and in so far the Buyer's claim for defects is justified and has been made in time, we may, upon our discretion, remedy the defect or deliver non-defective goods ('substitution'). Should we fail or decline the substitution, the Buyer may, upon the elapse of an adequate additional period of time set to us, withdraw from the contract or reduce the purchase price. In cases where the defect is only minor or where the goods have already been resold, processed or transformed, he may only reduce the purchase price.

3. We will reimburse the Buyer for his expenditures in connection with the substitution only in so far as such expenditures are reasonable and proportional to the purchase price of the goods, in no case more than 150 % of the purchase price. We will bear any further expenses such as for the mantling and dismantling of the defective goods

only in accordance with the rules of Section XI of these Conditions.

4. If and in so far the goods are subject to contractually agreed testing and inspection by the Buyer, such testing and inspection shall bar any claims for such defects which might have been determined by the agreed type of testing and inspection. Has the Buyer, by his own negligence, not learned of the defect, then he may claim only such defects which we have knowingly not disclosed to him or which are subject to a guarantee.

5. If the Buyer fails to immediately give to us the opportunity to inspect the defect, especially if he fails – upon our request – to immediately make the goods or samples hereof available to us, he will lose all of his warranty rights.

6. No warranty shall be given to goods sold as declassified material with regard to such defects either specified in the contract or to those normally to be expected. Goods classified as 'Ila-Ware' ('secondaries') are not subject to any warranty.

7. Our further liability is subject to Section XI. Any of the Buyer's rights of recourse according to §§ 478, 479 BGB (German Civil Code) shall remain unaffected.

## XI. Restriction of Liability and Limitation Periods

1. Our liability for breach of contractual or extra-contractual obligations, in particular for non-performed or deferred deliveries, for breach of duties prior to the contract ('Verschulden bei Vertragsanbahnung') as well as for tortuous acts – including our responsibility for our managerial staff and any other person employed in performing our obligations – shall be restricted to damages caused by our wrongful intent or by our gross negligence and shall in no case exceed the foreseeable losses and damages characteristic for the type of contract in question.

2. The aforesaid restriction shall not apply to such cases where we breach our fundamental contractual obligations and where such a breach of contract will endanger the contractual purpose; it shall neither pertain to damages to life, to the body or to the health caused by our fault nor to any cases where we have guaranteed certain characteristics of the goods. Nor shall such clause affect our statutory liability laid down in the Product Liability Act ('Produkthaftungsgesetz') of 15/12/89. Any statutory rules regarding the burden of proof shall remain unaffected by the aforesaid.

3. Unless otherwise agreed to any contractual claims which the Buyer is entitled to in connection with the delivery of the goods shall fall under statute of limitations within a period of one year after the goods have been delivered to the Buyer. This limitation shall also apply to such goods which, according to their normal purpose of use, have been used for constructional works related to real estate property and which have caused damage within this construction unless this purpose of use has been agreed upon in writing. This restriction shall not apply to our liability resulting from breaches of contract caused by our wrongful intent or by our gross negligence; neither to damages to life, to the body and to health caused by our fault nor to any recourse claims under §§ 478, 479 BGB (German Civil Code).

## XII. Place of Performance / Jurisdiction / Applicable Law

1. The place of performance for our deliveries shall be the supplying work in cases of ex-work deliveries, in all other cases it shall be our warehouse. The place of jurisdiction shall be at our registered office or – at our discretion – at the Buyer's registered office.

2. All legal relationships between us and the Buyer shall be governed by the non-standardized laws of the Federal

Republic of Germany supplementing these Conditions, especially the German BGB/HGB, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods of April 11<sup>th</sup> 1980 (UNCITRAL).

## XIII. Applicable Version

In cases of doubt, the German version of these General Conditions of Sale ('Allgemeine Verkaufsbedingungen') shall apply.