

# General Conditions of Sale

## 1 Scope of Application

**1.1** The following General Conditions of Sale apply exclusively to merchants, legal entities under public law and public trusts for all delivery transactions of Spherea GmbH ("supplier") unless otherwise set forth in the offer or the offer confirmation issued by the supplier.

**1.2** Standard business conditions of the purchaser are not recognised unless otherwise specifically agreed by the supplier in writing. The General Conditions of Sale of the supplier also apply where the supplier performs its obligation vis-a-vis the purchaser in the knowledge of and/or without objecting to any standard business conditions that are contrary to or deviate from these General Conditions of Sale.

## 2 Documentation

**2.1** Any documentation provided by the supplier to the purchaser prior to the conclusion of the contract, such as drawings, sketches, indications of weight or measurements, calculations, etc. are not made part of the contract unless specifically referenced to in the offer confirmation of the supplier. The supplier reserves the right to change the technical concept on which the Contract Products are based also after this point in time, provided that the contractually agreed quality and application profile of the Contract Products are not negatively affected thereby.

**2.2** All documents remain the sole property of the supplier, even if provided to the purchaser. These documents are to be treated confidentially and may not be disclosed to third parties or used by the purchaser for itself or for third parties without consent in writing by the supplier. Any such documents are to be returned upon request by the supplier.

## 3 Prices

**3.1** The prices of the supplier are ex-factory. Any price indications are net of the applicable VAT. Costs for packaging, loading and shipment, including insurance costs, are charged separately.

**3.2** In case of delivery of Contract Products to countries other than Germany, the prices of the supplier - unless otherwise agreed - are effective "net fob German port" respectively "freight paid German border" including usual packaging. In case that the prices of the supplier due to a special agreement are effective "cif", costs charged in the port of destination for lighterage, unloading and landing as well as port and quay charges are not included in the prices.

**3.3** Tariffs, consular fees and other taxes, charges, fees etc. as well as costs in connection with the aforementioned charged due to foreign regulations shall be borne by the purchaser.

**3.4** The supplier undertakes to comply with foreign regulations on packaging, weighing and tariffs if the purchaser - for this purpose - renders exact information in time. Additional costs accruing in this connection shall be borne by the purchaser.

**3.5** If the period between formation of the contract and delivery of the Contract Products is more than three months and if on the part of the supplier the cost factors for the manufacturing of the Contract Products increase during this time period (in particular as a result of collective bargaining agreements, wage increases and increase of

prices for raw materials) the supplier is entitled to charge the purchaser the thus increased price.

## 4 Conditions of Payment

**4.1** Unless not otherwise agreed with the purchaser, payments are to be made in Euros without any deductions 30 days after the invoice date.

In the event that the delivery is delayed for reasons attributable to the purchaser the delivery is deemed made upon notice by the supplier of it being prepared to ship the Contract Products.

**4.2** In case that the transfer of payments is not possible on the due date from a country out of which the payment is to be done, the purchaser is obliged to deposit the amount owed in a bank in that country - that is acceptable to the supplier - in favour of the supplier. If the purchaser has deposited the amount in a currency other than Euro and if the exchange rate changes to the disadvantage of the supplier until the transfer of payments, the purchaser is obliged to pay the respective exchange loss to the supplier.

**4.3** Payment terms are deemed met if the purchase price has been received by the supplier within the agreed time period and the supplier is free to dispose of the amount.

**4.4** In the event of the purchaser failing to make the payments when due the supplier is entitled to claim delay interest in an amount of 8 % p.a. above the applicable base rate. Furthermore, the supplier is entitled to claim additional interest based on other legal grounds and/or to claim further damages.

**4.5** The purchaser is not entitled to declare any set-offs with counterclaims unless such counterclaims are undisputed or unappealable determined.

**4.6** If following formation of the contract the economic status of the purchaser significantly deteriorates or circumstances become known to the supplier as a result of which the claim for remuneration is endangered the supplier is entitled to reject the performance of its own contractual obligations until such time as the purchaser has either fulfilled its obligations under this agreement or provided for appropriate security.

**4.7** The supplier may set a reasonable grace period within which the purchaser must, in exchange for performance by the supplier, in his election either fulfil his obligations under the contract or provide adequate security. Following an unsuccessful expiry of such grace period the supplier may rescind the contract.

## 5 Delivery

**5.1** Delivery times are according to the offer confirmation of the supplier and shall commence not earlier than upon receipt by the purchaser of the offer confirmation. The delivery schedule is complied with if within the time period agreed therein the goods are ready for shipment and the purchaser has been notified thereof.

**5.2** Unless otherwise agreed in writing, all deliveries are EXW (INCOTERMS 2010). If goods are to be shipped any freight or packaging costs are charged separately. The supplier in these cases shall subscribe to a transport insurance on behalf and on account of the purchaser. Any transport damages must be notified by the purchaser to the supplier and the shipment company in writing immediately upon receipt of delivery.

**5.3** In the case of an event of force majeure the supplier is entitled to postpone delivery for the full time of duration of such event of force majeure. If the supplier is unable to make delivery as a result of such event of force majeure, however, in any event for a period of not less than six months in duration, the supplier is discharged from its obligation to make delivery. An event of force majeure shall include all circumstances for which the supplier is not responsible and which render performance of the supplier of its delivery obligations impossible or impose upon the supplier an unreasonable hardship, such as labour disputes (e.g. strike, lock-out), civil war, acts of terrorism, civil unrest, natural disasters, acts of Government (e.g. import, export sanctions), shortage of energy or resources and delay in supply for which the supplier is not responsible. If the supplier is discharged from its obligation to make delivery, the purchaser is entitled to rescind the contract.

**5.4** Adherence by the supplier to the anticipated delivery schedule requires the timely and duly performance of all contractual cooperation obligations by the purchaser on its costs, in particular, the provision of all required documentation, permits and clearances in relation to the delivery of the Contract Products as well as the provision of the location, construction materials, raw materials and ancillary materials, tools, trained and untrained help, energy, water, light and heating required for making delivery as well as all inter-connections and protective garments and protection installations. In the event that there is a delay in the performance by the purchaser of his cooperation obligations for which the purchaser is responsible the delivery schedule for the supplier is extended by a reasonable period of time or by the duration of the delay, respectively.

**5.5** If upon request by the purchaser the delivery is postponed beyond the agreed delivery date the supplier shall charge the purchaser the actual storage costs beginning with the agreed delivery date or, in the event of storage in the supplier factory, an amount equal to 0,5 % of the total invoice amount for each beginning week of such storage. The purchaser is free to prove that the supplier has incurred lesser or no costs as a result of the storage.

**5.6** In the event that the supplier fails to deliver the Contract Products when due, the purchaser is entitled to claim damages after a grace periode of 90days. The amount of the claim equals to 0,25 % of the remuneration owed for the delayed delivery for each complete week of such delay beginning at the end of 90 days, however not more than 5 % of the contractually agreed total remuneration, unless the supplier proves that the purchaser has incurred lesser or no damages. Any further liability of the supplier for delay is, subject to Section 10 hereof, excluded.

## **6 Transfer of Risk**

**6.1** Risk passes to the purchaser upon delivery of the Contract Products to the shipping company or any entity charged with collecting the Contract Products (including any shipment with means of transportation of the purchaser), however, at the latest upon leaving of the storage facility of the supplier.

**6.2** In the event that shipment of the Contract Products is delayed for reasons for which the supplier is not responsible the risk is deemed to have passed to the purchaser upon notice by the supplier of its readiness to make shipment. The supplier is entitled to store the Contract Products and subscribe to a insurance against storage risk, both on the account of the purchaser.

**6.3** The foregoing provisions do not apply if pricing has been agreed upon for which the INCOTERMS 2010 including any amendments that are effective at the time of the conclusion of the contract provide for a different rule for the transfer of risk.

**6.4** If the purchaser is in default with accepting the Contract Products or if the purchaser returns the Contract Products without being entitled to do so, the supplier, following expiry of a reasonable cure period, may claim damages. Such damage claims are limited in value to 20 % of the net contract value, provided however that the supplier shall be entitled to prove damages in excess of such amount and further provided that the purchaser shall be entitled to prove that the supplier has incurred damages lower than such amount or no damages at all, respectively.

## **7 Retention of Title**

**7.1** The supplier reserves the following securities until such time when all claims to which the supplier is entitled from the entire business relationship with the purchaser are fully settled. These securities shall be released, at the election of the supplier, if the realisation value of the securities exceeds the total of the claims of the supplier against the purchaser by more than 20 % for more than a transitional period. In the event of running accounts the securities serve to secure the net claim of such running accounts.

**7.2** Unless otherwise agreed, the Contract Products remain the property of the supplier until payment in full. The purchaser is not entitled to pledge the Contract Products or transfer title therein for purposes of security. If a third party nevertheless acquires any rights into the Contract Products the purchaser already now assigns any and all rights in and to the Contract Products resulting thereof to the supplier. The supplier hereby accepts such assignment. The purchaser is obligated to immediately notify the supplier if in relation to the Contract Products a pledge, an attachment or other disposition is made by a third party.

**7.3** The purchaser shall exercise due care in handling the Contract Products that are subject to the retention of title and shall orderly service these Contract Products. In particular, the purchaser shall at its own cost insure the Contract Products against fire and water damages, other damages, theft and destruction in an amount equal to the replacement value of the Contract Products. The purchaser already now hereby assigns all claims under the insurance contract to the supplier. The supplier hereby accepts such assignment. The supplier is entitled to request that the purchaser provides appropriate documentation evidencing the existence of the insurance coverage.

**7.4** The purchaser is entitled to sell the Contract Products delivered by the supplier in the ordinary course of his business. For purposes of this case the purchaser already now hereby assigns to the supplier all claims from any sale of such Contract Products. The supplier hereby accepts such assignment. This assignment shall only be up to an amount equal to the value of the Contract Products as invoiced by the supplier. The part of the claim assigned to the supplier has priority over and above the remainder of the claim.

**7.5** As long as the purchaser orderly adheres to his contract obligations vis-a-vis the supplier the purchaser is entitled to collect on the claims assigned to the supplier for purposes of security. Upon request of the supplier the purchaser shall be obligated to disclose to the third party acquiror the retention of title and hand over to the supplier all documentation necessary for asserting such claims and to provide any necessary additional information. All costs related to the collection of the claims by the supplier and to possible interventions are borne by the purchaser.

**7.6** In the event of a default in whole or in part by the purchaser of his payment obligation, or if the purchaser is overindebted or has ceased to make payments, or if an application for composition or insolvency proceedings has been made or should have been made the supplier is entitled to rescind the contract and to claim that all Contract Products still subject to the retention of title be returned

to immediately take such Contract Products into possession. In addition, the supplier is entitled to assert any further rights resulting from the retention of title; the same shall apply in the event of a material deterioration of the economic situation of the purchaser. purchaser shall grant access to the supplier or its advisors to all of business premises during the normal business hours. The supplier entitled to realise the Contract Products, thereby exercising the due care of an orderly business man and to retain the proceeds from such realisation, which proceeds shall be counted against any open claims against the purchaser. Any retention rights of the purchaser are explicitly excluded.

**7.7** In the event that the purchaser processes the Contract Products or changes or combines these with other goods, such processing, change or combination shall occur for the supplier. The supplier shall become the immediate owner of the goods manufactured by way of processing, change or combination. Should this be impossible for legal reasons the supplier and the purchaser agree that the supplier shall at all points of time of the processing, changing or combination become the sole owner of the new goods. The purchaser stores the new goods for the supplier, thereby exercising the due care of an orderly business man. The goods so created by way of processing, change or combination shall be subject to a retention of title by the supplier.

**7.8** In case that the retention of title in the aforementioned form is not valid according to the laws of the country of destination, the purchaser is obliged to cooperate in ensuring an equivalent security interest according to the provisions of said country in favour of the supplier.

## **8 Purchaser's remedies in case of defective goods**

**8.1** For determining the existence of any defects the purchaser shall immediately upon delivery examine the Contract Products and, if an obvious defect is present, shall notify the supplier thereof without undue delay in writing. Non-obvious defects shall be notified by the purchaser to the supplier not later than one year following delivery of the Contract Products. If the purchaser fails to comply with these time periods the Contract Products are deemed accepted with the result that the purchaser shall lose the rights set forth in paras 9.2 and 9.4 hereof.

**8.2** Defects in the Software only apply, if the intended function is impacted.

**8.3** If the Contract Products are proven to be defective the purchaser is entitled to request specific performance, i.e., in his election either the cure by the supplier of the defect or the delivery of a non-defective good.

**8.4** The supplier may make any specific performance subject to payment by the purchaser of a part of the remuneration, thereby taking in account the nature of the defect. The supplier is entitled to reject the type of performance elected by the purchaser if such performance can only be accomplished at an unreasonable expense.

**8.5** If the specific performance undertaken by the supplier has failed twice, if the supplier rejects to undertake such specific performance, or if the supplier fails to provide such specific performance within a reasonable cure period set by the purchaser the purchaser is entitled to reduce the purchase price or to rescind the contract and to claim compensation for futile expenses or for damages in lieu of performance. The purchaser is precluded from rescinding the contract and from claiming damages in lieu of performance if the defect of the good is merely unsubstantial.

**8.6** The purchaser shall have no rights in relation to such claims that are, for example, caused by improper or inappropriate storage, handling, maintenance or excessive use of the Contract Products or as a result of the use of unsuitable means of operation, construction work and real property, or from deficient modifications or repair works or from the damaging of seals of the Contract Products or otherwise as a result of a violation of contractual provisions and product specifications by the purchaser or by third parties.

**8.7** Any claims of the purchaser shall be subject to a statute of limitation of one year following delivery of the Contract Products.

## **9 Liability**

**9.1** The supplier shall be liable without limitation for gross negligence and intent.

**9.2** The supplier shall be liable for mere negligence -other than in cases of injury to life, body or health - only if essential contractual obligations (cardinal obligations) are breached and limited to the typical and foreseeable damages, however only up to a maximum amount of Euro 150.000,00 € for each damaging event and in any event up to a maximum amount of Euro 250.000,00 €

**9.3** Any liability for indirect and unforeseeable damages, for standstill of production and recovery for loss of use, lost profits, lost savings and economic loss due to a third party claim are excluded in the event of mere negligence -with the exception of any claims under para 10.2 hereof.

**9.4** Any further reaching liability than provided in these General Conditions of Sale shall - regardless of the legal basis of such claim - be excluded.

**9.5** The limitations and exclusions of liability pursuant to paras 10.2, 10.3 and 10.4 shall not apply to such liabilities which are by way of law (such as the Product Liability Act) or as a result of a guaranty unrelated to faultive behaviour.

**9.6** In so far as the liability of the supplier is excluded or limited pursuant to paras 10.2, 10.3 and 10.4 hereof this shall also apply to the personal liability of any employee, representative, officer or agent of the supplier.

## **10 Final Provisions**

**10.1** The business relations between the supplier and the purchaser shall be governed and construed exclusively in accordance with the law of the Federal Republic of Germany. The application of the provisions of the Convention on the International Sale of Goods (CISG) shall be excluded.

**10.2** The exclusive place of performance for all obligations of delivery and payment by the purchaser shall be Ulm.

**10.3** The exclusive venue for all disputes arising from the business relationship shall be Ulm.

**10.4** Any amendments to or modifications of the contract and its ancillary agreements shall be made in writing to be legally effective. The same shall apply to the derogation of this paragraph.

**10.5** In the event that any of the aforementioned provisions is or becomes ineffective, the validity of the remaining provisions shall remain unaffected. The parties shall replace the invalid provision by such valid provision which in factual, legal and economic terms comes closest to the Standard Conditions of Sale in their entirety and to the contractual arrangements. The same shall apply to any possible gaps in the General Conditions of Sale.