

# **General Terms and Conditions of Sale and Delivery of Johns Manville Sales GmbH and Schuller GmbH**

## **1. General Terms**

- 1.1 These General Terms and Conditions of Sale and Delivery shall apply to all our present and future contracts, offers, deliveries and other services. The validity of any General Terms of the Buyer is hereby objected to, even in the event that they are conveyed to us by a letter of confirmation or by other means.
- 1.2 Oral side-agreements, warranties and guarantees, the exclusion, alteration of or amendment to these General Terms and Conditions of Sale and Delivery require our express written confirmation in order to become effective. This shall also apply for waivers of this written form requirement. The written form requirement shall also be deemed to be observed in case of transmittal by way of telecommunications (including e-mail).
- 1.3 For cross-border transactions, the Incoterms in the version valid at the time of the conclusion of the contract, to the extent these General Terms and Conditions of Sale and Delivery do not contain any differing regulations.

## **2. Offers and Conclusions of Contract**

Our offers are subject to confirmation.

## **3. Prices, Calculation**

All pricing information is determined at our option ex works or ex warehouse plus the statutory value added tax. Unless agreed otherwise in writing, the calculation of the price shall be determined by the flat size (*Flächengröße*) in case of flat (*flächig*) products and by the weight upon dispatch in case of other products.

## **4. Delivery, Service, Passing of the risk, Packaging**

- 4.1 Our obligation to deliver is subject to us receiving correct and timely deliveries from our suppliers.
- 4.2 Deliveries are principally made ex works or ex warehouse according to our choice. Unless otherwise agreed, we shall send the goods uninsured at the risk and cost of the Buyer. The risk shall also pass to the Buyer on handing over the goods to the authorised shippers if the goods are delivered by our own employees.
- 4.3 Packaging including yarn carries given on loan are to be sent back to the supplier in case of deliveries in Germany at the latest 3 months after the billing date and in case of deliveries abroad at the latest 6 months after the billing date freight paid, in an orderly condition and without remains of the product. Should this not occur, we can charge the Buyer for the recovery cost and/or cleaning/disposal costs. Other packaging and packaging materials may only be reused in business dealings after making our company logo and name, our trade mark or other markings irreconisable.

The special conditions and guidelines of Johns Manville Sales GmbH for deliveries in loan packaging and for the transmittal of customised packaging are referred to.

## **5. Payment, Setting-off, Retention**

- 5.1 The punctuality of payments shall be determined by the date on which we receive the funds or the date on which the funds are unconditionally credited to our bank account.
- 5.2 The Buyer shall only be entitled to set-off for counter-claims which are undisputed or have finally been assessed by the court or which are ripe for judgement. The Buyer shall only be entitled to a legal right of retention or right to refuse performance, for example for defects of the goods, for undisputed claims, claims finally assessed in court or claims ripe for judgement, which arise from the same contractual relationship with us. The above mentioned restrictions of the right to set-off, right of retention and right to refuse performance of the Buyer shall not apply if there are well-founded doubts in our ability to meet financial obligations.

## **6. Retention of Title**

- 6.1 All goods delivered by us (hereinafter referred to also as “Reserved Goods”) shall remain our property until all our present and future claims against the Buyer arising from the business relationship have been satisfied. For current accounts, retention of title shall secure our credit balance as it exists at any given time.
- 6.2 Processing and transformation of Reserved Goods is always deemed to be carried out by us as manufacturer within the meaning of Section 950 German Civil Code without any liability arising for us. If the Reserved Goods are processed and transformed with other goods not delivered by us we shall be entitled to a share in the ownership of the new good in proportion to the invoiced amount of the Reserved Goods with the purchase price of the other processed and transformed goods at the time of the processing or transformation.

In the event that Reserved Goods are combined, mixed or blended with moveable goods of the buyer, that the goods of the Buyer are viewed as the essential part, the Buyer hereby transfers his ownership rights in the whole goods in proportion to the value of the Reserved Goods to the value of the other combined, mixed or blended goods. Should the reserved good be combined, mixed or blended with moveable goods of a third party, so that the goods of the third party are viewed as the essential part, the Buyer hereby assigns us that amount of any payment claim against third parties which corresponds to the invoiced value of the Reserved Goods.

The goods created from the processing, transformation, combination or mixing (hereinafter referred to as “New Goods”) and the (co-) ownership rights in the New Goods to which we are entitled or which are to be transferred according to this Clause 6.2 as well as claims for payment transferred pursuant to this Clause 6.2 shall serve as security of our claims in the same way as the Reserved Goods themselves pursuant to Clause 6.1.

- 6.3 The Buyer is authorised to resell the Reserved Goods and the New Goods within the ordinary course of business under retention of title. The Buyer is obligated to ensure that the claims from such re-sales can be transferred to us according to the requirements of Clauses 6.4 and 6.5.
- 6.4 The Buyer’s claims out of the resale of the Reserved Goods are hereby assigned to us. They serve as our security to the same extent as the Reserved Goods. If the Buyer sells

the Reserved Goods together with other goods not supplied by us, the assignment of the claim shall only apply in the amount of the invoiced amount which is attributed to the resale of the Reserved Goods. On the sale of goods, in which we have co-ownership pursuant to Clause 6.2 or legal provisions on the joining, mixing or blending of goods, the assignment of the claim shall be in the amount of portion of our co-ownership.

- 6.5 In the event the Buyer integrates claims resulting from the resale of the Reserved Good into a current account with his customers, he hereby assigns to us any acknowledged or final credit balance in his favour in the amount equal to the total amount of all claims resulting from the resale of the Reserved Goods which were integrated into the current account. Clause 6.3 Sentences 3 and 4 shall apply *mutatis mutandis*.
- 6.6 The Buyer is authorised to collect the claims assigned to us resulting from the resale of Reserved Goods or New Goods. The Buyer is not permitted to assign the claims resulting from the resale to third parties, including within the scope of a genuine factoring agreement.
- 6.7 We may withdraw the authorisation to resell the Reserved Goods or New Goods pursuant to Clause 6.3 and the authorisation to collect the claims assigned to us pursuant to Clause 6.6 in the event of default on payment or discontinuation of payment of the Buyer as well as in the case of an application to open insolvency proceedings or in other cases of a deterioration of the Buyers credit standing or trustworthiness. If the authorisation to resell or the authorisation to collect the claims is withdrawn, the Buyer is obligated to inform his customers of the assignment of the claims to us without undue delay and surrender to us all information and documents required for the collection of the claims. Moreover, in this case, he shall be obligated to surrender or assign to us any collateral for claims against his customers to which he may be entitled.
- 6.8 In the event of default of payment or other not insubstantial conduct of the Buyer in breach of the contract and in the event of the cancellation of the contract, the Buyer hereby consents to us repossessing or having repossessed the Reserved Goods and – to the extent that we are the sole owner - the New Goods in the Buyer's possession within the meaning of section 6.2. Such repossession shall only constitute notice of cancellation of the contract if we expressly state this.

## **7. Notification of a Defect and Rights of the Buyer in the case of Defects**

- 7.1 Goods are defective only if they do not meet the agreed upon quality. Buyer is responsible for the selection of the goods and for checking the suitability of the goods for the use intended by the Buyer. Missing suitability for any use intended by Buyer constitutes a defect only in case such use has been mentioned in the contract.
- 7.2 Defects which are recognisable on an inspection of the goods undertake without undue delay after delivery shall be reported to us in writing without undue delay, but at the latest within two weeks of the delivery of the goods, for other defects without undue delay, but at the latest two weeks after their discovery. The relevant date of the reclamation, in determining whether it is within time, is deemed the date of receipt by us. If the notification of the defect is not on time, any of the Buyer's rights concerning the defect shall expire.
- 7.3 Any claims of the Buyer for any defect shall be limited to a claim to defect-free specific performance. We may elect to make such defect-free performance either by clearing up the defect or by delivering a defect-free item. If such defect-free performance

fails, the Buyer may, at his discretion, terminate the purchase contract or reduce the purchase price.

- 7.4 To the extent we are liable for damages for any defect (on whatever legal basis, including any damages claim for general breach of contract, breach of any pre-contractual duty, or tortious claims), such liability for damages shall be limited as stipulated in clause 8 hereof.
- 7.5 This shall not affect any recourse claims on the Customer's part pursuant to s. 478 German Civil Code (*Bürgerliches Gesetzbuch*). If we are liable for damages in the course of any such recourse pursuant to the law, our liability shall be limited as stipulated in clause 8 hereof.
- 7.6 Any claim on the Buyer's part for any defect shall become time-barred after one year, commencing at receipt of the goods. This shall not apply (1) in the event of any intentional breach or fraudulent concealment of the defect, (2) in the event of breach of any warranty for quality extended by us pursuant to s. 443 German Civil Code (*Bürgerliches Gesetzbuch*), and (3) regarding any item that in accordance with its usual use has been used for any building structure and has caused such building structure to become defective. Further, the above one-year limitation period shall not apply to damages claims for defects where the damage or loss results from any grossly negligent breach by our statutory representatives or our executives (*leitende Angestellte*) or the damage is personal injury or we are liable under tort. Where the defect consists in any third party's right on the basis of which surrender of the item may be claimed or in any other right registered on the land register, then the limitation period shall be three years. This shall not affect the statutory provisions on the limitation periods for recourse claims pursuant to s. 479 German Civil Code (*Bürgerliches Gesetzbuch*) or on limitation periods and exclusion periods pursuant to the German Product Liability Act (*Produkthaftungsgesetz*).

## **8. Liability**

- 8.1 We shall be liable pursuant to the statutory provisions for any damage or loss resulting from any intentional or grossly negligent breach by our statutory representatives or our executives (*leitende Angestellte*) and for any personal injury. In the event of any intentional or grossly negligent breach by any ordinary agent employed in our performance (*einfache Erfüllungsgehilfen*) and in the event of a slightly negligent breach of any material term or condition of the contract that is absolutely necessary for attaining the purpose of the contract and on the strict compliance with which the Buyer must be able to rely, we shall be liable pursuant to the relevant laws limited to such damage or loss the type and scope of which had been foreseeable by us at entering the contract. As for the rest, any claims on the Buyer's part for direct or indirect damages (on whatever legal basis including any damages claims for breach of any pre-contractual duty, or tortious claims) shall be excluded.
- 8.2 Any statutory liability for the lack of any characteristic of the item warranted by us or pursuant to the German Product Liability Act (*Produkthaftungsgesetz*) shall remain unaffected.
- 8.3 The limitations of liability mentioned in this Clause 8 shall also apply to any damages claims on the Buyer's part against our statutory representatives, executives (*leitende Angestellte*) and other agents employed in the performance of our obligations (*Erfüllungsgehilfen*).

8.4 In case the Buyer is entitled to demand reimbursement of expenses instead of demanding damages in lieu of performance, the limitations of liability pursuant to Sections 8.1 through 8.3 shall apply to this reimbursement claim as well.

**9. Place of Performance, Jurisdiction and Applicable Law**

9.1 Place of Performance for the delivery shall be the factory or warehouse from which the delivery is made. Place of payment shall be Wertheim am Main.

9.2 If the buyer is a merchant, a public-law corporation or public-law special fund, the respective seller's domicile shall exclusively be the place of jurisdiction for all direct or indirect disputes arising out of the contractual relationship. We may elect instead to bring any such dispute before any other court that has jurisdiction pursuant to the law.

9.3 The law of the Federal Republic of Germany shall apply; the United Nations Convention on Contracts for the International Sale of Goods is excluded.

**NOTE**

**We store and process data concerning the Buyer by computer to the extent that this is necessary for the orderly transaction of contractual business.**