

# Werner Müller GmbH, Rudolf-Diesel-Str. 7, 67227 Frankenthal, Germany

## General Terms and Conditions of Business

### 1. Scope

- a) These general terms and conditions of business only apply to contracts with legal entities under public law, separate funds under public law or enterprises which at the time of the conclusion of the contract are acting in conducting their trade or separate occupational activities.
- b) Our shipments, services, and offers are exclusively based on these general terms and conditions of business. Therefore they apply also to future business connections. The customer's general terms and conditions of business are not acknowledged.

### 2. Offers/signing of contracts

- a) Our offers are conditional and without obligation. A contractual obligation only arises upon our written confirmation of the order or upon execution of the order and receipt of the good or service.
- b) All amendments or supplements to the contract require our written approval.
- c) The product specifications made in the offer and in any brochures and other informative material are guidelines unless they are recognized as binding in the confirmation of the order.

### 3. Delivery dates

The period in which delivery is to be performed is measured from the date on which the customer receives the order confirmation at the earliest, however not before final clarification of all technical details by both parties to the contract and not before receipt of any other documentation to be provided by the customer, official approval and any advance payment agreed upon.

### 4. Force Majeure

Delivery dates are prolonged in the event and for the duration of any acts for which we are not responsible, in particular force majeure, war, civil unrest, general scarcity of raw materials or utilities, official action, strikes or legal lock-outs, also in the event that such events occur at our suppliers.

### 5. Consulting

We provide consulting regarding applications to the best of our knowledge and ability based on our development activities and experience. However, all notes and information concerning the suitability and application of our products are not binding and do not exempt the customer from its duty of conducting its own trials and tests.

### 6. Price/payments

- a) Our prices are quoted net of Value Added Tax which shall be added as applicable as shall any taxes, customs and other official levies due in the customer's country.
- b) The customer can only offset receivables if these are undisputed or legally enforceable. The same applies to the assertion of a right of retention unless the counter-claims are based on the same contractual agreement.
- c) Penalties shall be charged for late payment in line with the legally prescribed rates. Our right to receive indemnification of any other losses arising from late payment remains unaffected.
- d) If no divergent agreement exists, the time for payment commences on the date of invoice.
- e) If the terms of payment are breached and there is a significant deterioration in the financial situation of the customer arising after the contract has been signed which endangers payment being made, we are entitled to supply outstanding goods and services on the basis of advance payment or demand prior provision of collateral of a financial institution. This further entitles us to demand immediate payment of all other receivables from the customer.

### 7. Warranties

- a) For supplies to businessmen (as defined by German law), sec. 377 German Commercial Code (HGB) (duty to examine incoming goods and announce defects) remains unaffected.
- b) For all products that have been manufactured in series by us with the exception of the colored paste which has a shelf life of 6 months beginning with the dated of filling – the legal regulations for durability apply provided that the period of limitation as mentioned in § 438 sec. 1 no. 3 BGB (German Civil Code) is extended to three years beginning on the date the goods are passed on to the freight carrier. For commodity the legal warranty remains unaffected.
- c) The warranty does not apply in cases when  
- our products are not used in keeping with our recommendations and the recommendations of the adhesive and floor covering manufacturers and pursuant to VOB (*German Construction Industry Code of Practice*) Part C – floor covering work DIN 18365 – or  
- if spaces that are treated with our products are exposed to use beyond the normal measure or are not properly maintained.

### 8. Indemnification/Warranty

- a) Indemnification claims are excluded, regardless of the nature of the infringement including unlawful action, with the exception of cases of willful intent or gross negligence.
- b) In the event of an infringement of contractual obligations we are liable for every case of negligence but only up to the amount of the foreseeable damage. Claims to lost profits, saved expenses, from claims for damages from third parties as well as indirect or consequential losses cannot be made unless one of the essential features guaranteed by us is designed to protect the buyer against such damage. Significant contractual obligations are obligations which must be satisfied to allow

the due execution of the agreement and on whose compliance the parties to the agreement can generally rely.

- c) The liability limitations and exclusions in lit. a) and b) above do not apply to claims arising from fraudulent behavior on our part as well as for liability for guaranteed essential features, from claims pursuant to the product liability law or other obligations from producer liability as well as for damage from the injury to life, body or health.
- d) To the extent that our liability is excluded or limited, this shall also apply to officers, employees, representatives or vicarious agents.

### 9. Rights of retention and other securities

#### a) Retention of title

- (1) We retain title to the goods (retained goods) for as long as receivables from the customer, of whatever kind, from present or future business relations are outstanding. For open accounts, this retention of title serves to secure the outstanding balance of our receivables.
- (2) In the course of ordinary business, the customer may resell the retained goods or process them. Sale of the retained goods without a retention of title clause or when a ban on assignment has been agreed on with the next customer in the chain, or client of the customer, does not qualify as an ordinary business transaction. This authorization lapses as soon as the customer is in default on payments or suffers a significant deterioration in its financial situation.

The customer hereby assigns to us, in the amount of the amount of our final invoice (VAT incl.), all receivables from the resale or processing of the retained goods including all ancillary rights and security and grants us priority over other claims. If the customer sells its receivable in a factoring arrangement, the customer assigns to us the receivable from the factor in the amount of the amount of our final invoice (VAT incl.). We hereby accept the assignment.

- (3) Until the authorization under paragraph (2) lapses, the customer is entitled to collect on the receivables it assigned to us. When the authorization lapses, we are entitled to inform the end customer or customer's client of the assignment and collect the receivable in our own name.
- (4) It is not permitted to transfer or assign as collateral nor pledge the retained goods or assigned receivables. The customer must inform us immediately in writing of any pledges or other encroachments by third parties.
- (5) The customer shall provide us on demand with a list of those goods to which we have retained title and any receivables assigned to us. When the authorization granted in paragraph (3) lapses, the customer shall additionally provide us with all information that is necessary to enforce the assigned receivables.
- (6) The customer shall keep possession of the retained goods for our benefit free of charge. The customer shall take out insurance coverage against the customary perils such as fire, theft, and transport- as well as pipe water damage. The customer shall assign to us any indemnification receivable from an insurer and third parties of an amount equal to the invoiced amount of the goods concerned - on a pro rata basis if applicable. We accept this assignment.
- (7) If the value of the collateral to which we are entitled exceeds the value of our receivables by more than 10%, we agree to release collateral security upon demand of the customer or a third party affected by the security arrangement; the collateral to be released is at our discretion.

#### b) Other collaterals

- (1) Should a retention of title and /or other security arrangement governed in a) above prove to be legally invalid or should its legal foundation or validity for third parties depend on certain prerequisites that are impossible for us or the customer to meet, or are unreasonable or uneconomic, we have a right to another form of security as customarily required by banks and make our duty to deliver goods dependent on the provision of such security.
- (2) The customer agrees to cooperate with any action that is required for such security to be granted.

### 10. Miscellaneous

- a) Should individual provisions of these general terms and conditions of delivery be invalid, the invalid provision shall be replaced with one that comes closest to the economic intent of the original provision.
- b) Place of performance for all obligations of the parties is Frankenthal, any other agreements on terms of delivery and payment notwithstanding.
- c) The contractual relationship is subject in its entirety to the law of the Federal Republic of Germany. However, application of the Vienna United Nations Convention on Contracts for the International Sale of Goods (CISG) dated April 11, 1980 is excluded.
- d) Frankenthal is the court of competent jurisdiction for all disputes arising from the contractual relationship. However, we are also entitled to pursue litigation at the court where the customer is registered.