

## **General Terms of Sale and Delivery of MONTWILL GmbH**

### **1. General – Coverage**

#### **1.1.**

**Our General Terms of Sale and Delivery – named GTSD hereafter – apply exclusively. The version, in each case, valid at the time of concluding the contract is applicable.**

**Any conflicting or supplementary conditions or conditions differing from our GTSD of the customers shall not be recognized; unless the validity of the customer's GTSD has been expressly agreed upon in writing.**

**Our GTSD also apply when we effect delivery to the customer without any reservation although knowing of conflicting or differing or supplementary conditions of the customers.**

#### **1.2**

**Our GTSD define customers being entrepreneurs as far as they are natural persons or legal entities or partnerships with legal capacity with whom business relationships are entered into and who practise their commercial or independent occupations. The same is valid for legal entities of the public body or special funds under public law.**

### **2. Conclusion of the contract, part-delivery, hindrance of delivery**

#### **2.1.**

**Our offers are always without engagement and non-binding. The depiction of our products on the internet, in our catalogues as well as in other publications do not constitute an offer, but are solely a non-binding invitation for customers to order.**

#### **2.2**

**By ordering the desired goods the customer bindingly declares his offer to conclude the contract.**

#### **2.3**

**The customer shall receive our order confirmation (order acceptance) reproducing the contents of the contract as a rule within two working days after receipt of his binding order. The purchase and delivery contract is then bindingly concluded for both parties.**

#### **2.4**

**Should the contract include the delivery of several individual items, we are entitled to effect part-deliveries.**

## **2.5**

**Should we – due to circumstances which affect the customer - see ourselves unable to execute completely or partly or in due time, we will advise the customer by telephone or e-mail immediately. Any deposit effected will be reimbursed without delay. The customer is not entitled to any further claims.**

## **2.6**

**We shall inform the customer without delay should we be unable to carry out the order completely or partly or in due time due to force majeure including strikes, interrupted supply or other severe disruption. In such cases, the binding delivery period entered into by us is extended until the causes have been rectified. After four weeks the customer is, however, entitled to set an extension announcing his no longer being interested in the consignment. The customer is not entitled to any further claims.**

**In the case of our being unable to execute the order in the long run due to the circumstances listed above, we are entitled to withdraw from the contract. Any deposit effected will be reimbursed to the customers without delay. The customer is not entitled to any further claims.**

## **3. Prices and terms of payment**

### **3.1**

**Our prices are quoted ex works excluding postage and packing unless our order confirmation states otherwise.**

### **3.2**

**Statutory VAT is not included in our prices. The VAT will be shown on the invoice at the rate valid on the date of issuing the invoice.**

### **3.3**

**The deduction of any cash discount requires a separate agreement in writing.**

### **3.4**

**If nothing is stated to the contrary on our order confirmation the net purchase price (without deduction) is due with 30 days of the invoice date. Legal regulations apply for consequences of a delay in payment.**

### **3.5**

**The customer only has the right to set-off invoices if his claims have been legally established, undisputed or recognized by us. The customer is only entitled to execute his right of retention should his claim refer to the same contractual relationship.**

## **4. Delivery time, liability in the case of default in acceptance, liability in the**

## **case of delay in delivery**

### **4.1**

**The beginning of the delivery time stated by us in the order confirmation requires the prior clarification of all technical questions. This includes any technical questions which can only be clarified together with the customer.**

**The observation of our delivery commitment also requires the punctual and correct fulfilment of the customer obligations as agreed upon in the contract (obligation to cooperate). In case the customer does not fulfil his obligations we reserve the exception of non-fulfilment of the contract.**

### **4.2**

**In the case of default of acceptance by the customer or his culpable infringement of his obligation to cooperate – including his involvement in the clarification of technical questions under 4.1 and also the acceptance of our delivery – we are entitled to demand replacement for any damage incurred by us including any additional expenditure. We reserve the right to assert further legal claims.**

### **4.3**

**Under the conditions of 4.2 the passing of risk – accidental loss or accidental deterioration of the purchased goods – is transferred to the customer at the point in time when he defaults or defaults acceptance.**

### **4.4**

**Our liability to the customer is subject to the legal requirements as far as the concluded sales and delivery contract is a fixed deal and falls under the regulations of §§ 286 para. 2 no. 4 BGB; 376 HGB.**

### **4.5**

**Complaints of part-deliveries according 2.4 of our GTSD do not authorize the rejection of the outstanding delivery.**

## **5. Place of performance, passing of risk, contract which provides for delivery by carrier**

### **5.1**

**Place of performance is our registered office in D-51469 Bergisch-Gladbach.**

### **5.2**

**The risk of accidental loss or accidental deterioration of the goods ordered by the customer is transferred to the customer when handing over the goods at our premises (i.e. “ex works”). If the customer has not gone through the acceptance procedure this will be considered as acceptance.**

### **5.3**

**Should we have contractually agreed to dispatch the goods to another place than the place of performance on request of the customer the risk of accidental loss or accidental deterioration of the goods is transferred to the customer at the point in time when the goods are handed over the carrier. Place of performance remains our registered office in Bergisch-Gladbach.**

## **6. Warranty, damages, limitation, guarantee**

### **6.1**

**Warranty rights can only be asserted if the customer has correctly fulfilled his prior obligations regarding inspection and complaint as per § 377 HGB. This means that the customer is obliged to examine the goods delivered by us without undue delay for discrepancies in quality and quantity and also to advise us in writing of visible defects within a period of one week from receipt of goods (e-mail notification is sufficient).**

**We are to be informed in writing about hidden defects within one week of their detection (e-mail notification is sufficient).**

**The customer carries the full burden of proof with regard to the requirements of all claims, i.e. for the actual defect, for the point in time of detecting the defect and for the punctual complaint.**

### **6.2**

**Should there be a defect with the purchased goods the customer is free to chose subsequent fulfilment through repair or delivery of a new item free of defect.**

**We reserve the right to refuse the choice of subsequent fulfilment, especially due to disproportionality of costs, as per legal requirements.**

### **6.3**

**The customer is entitled to reduce the purchase price appropriately or to withdraw from the contract should the subsequent fulfilment be impossible, should the subsequent fulfilment fail or should we have refused both options for subsequent fulfilment.**

### **6.4**

**The customer can only claim compensation for defects according to legal requirements.**

**Our liability regarding compensation for defects – no matter what legal nature the claim may be – is limited to what might typically be predicted unless we or our vicarious agents have acted deliberately or with gross negligence.**

**The limitation of our liability regarding what might typically be predicted does not apply for injury to life, limb or health.**

## **6.5**

**The limitation period for claims for faults is 12 months from handing over of the goods to the customer.**

**The limitation period for claims for faults is exclusively based on legal requirements should we be liable to life, limb or health. For the rest, the limitation article only applies should we or our vicarious agents not have acted deliberately or with gross negligence.**

## **6.6**

**As far as our liability regarding compensation is limited or excluded, this also applies with regard to any personal liability regarding compensation of our employees, representatives and vicarious agents.**

## **6.7**

**Special guarantee promises made by us only exist should they have been made in writing and expressly identified as such.**

# **7. Limitation of liability in case of other breach of duty**

## **7.1.**

**Compensation as a result of other breaches of duty than deficiency of goods delivered by us can only be claimed as per legal requirements.**

## **7.2**

**Legal requirements apply for our liability for damages to life, limb or health without restriction of any kind. For our liability for other damages the same applies should we or our vicarious agents have acted deliberately or with gross negligence.**

## **7.3**

**In all other cases the following applies:**

**Our liability is limited to the damage that might typically be predicted.**

**Furthermore, our liability in these cases is excluded should the customer not have claimed compensation by a cut-off period of six months after knowledge of the circumstances that constitute the claim and also claims in writing the damage caused by us or our vicarious agents.**

**A claim for compensation is completely excluded should we or our vicarious agents fail to observe a contractual or pre-contractual secondary obligation by way of simple negligence only, provided the observation of the contractual or pre-contractual obligation is not absolutely necessary to execute the contract.**

## **7.4**

**Date of issue: 01.06.2008**

**As far as our liability regarding compensation is excluded or limited this also applies for a possible personal liability of our employees, representatives and vicarious agents.**

## **8. Retention of Title**

### **8.1**

**We retain the title to the sales item until all payments from the delivery contracts have been received with ongoing (current) business relations, until all payments have been received from the business relations especially any open accounts.**

**An ongoing (current) business relationship exists if the customer has purchased goods from us at least once.**

### **8.2**

**The customer is obliged to treat the goods with care and to insure them sufficiently against fire, water and theft damage at his own expense. He already transfers to us his title to insurance benefits or other claims for replacement or claims based on loss or deterioration of the goods delivered by us to serve as a security. These claims serve as a security in the same way as our retention to the goods secure our claims.**

### **8.3**

**The customer has to inform us without delay about the seizing or access of third parties to our devices in order that we can take the necessary measures to secure ownership. The same applies for any damage or for the destruction of the goods delivered by us.**

**The customer is obliged to compensate for all damages and charges resulting from a breach of these obligations and which make necessary interventional measures to secure ownership.**

### **8.4**

**Is the purchased item intrinsically tied to other items that do not belong to us we acquire at the point of connection joined ownership of this new object in relation to the value of the purchased item (total invoice amount incl. VAT). Should the connection mean that the customer's object is to be considered to be the main object it is seen as agreed that the customer transfers the proportional joined ownership to us. The customer retains the resulting joined ownership for us.**

### **8.5**

**As far as the customer is a trader/retailer he is entitled to sell the goods in regular business dealings. He, however, cedes to us now all demands on his customers or third parties he gains from the sale to the value of the total invoice amount incl. VAT.**

**This is independent of whether the purchased item has been connected to objects**

**of the final customer or not.**

**The trader/retailer remains entitled to collect the claim we have also after the cession until cancelled. Our authorisation to collect the claim ourselves remain unaffected. We, however, commit not to collect the claim ourselves as long as the trader/retailer fulfils his payment obligations from the earned profit or does not default payment and especially if no settlement or insolvency proceedings have been filed or suspension of payment is on hand. If this is, however, the case we may demand that the trader/retailer discloses the ceded claims and the debtors, gives all details necessary for collection, releases the corresponding documents and informs the debtors (third parties) about the cession.**

## **9. Place of jurisdiction, applicable law**

### **9.1**

**For all legal disputes which arise from the customer's order and our declarations, deliveries and goods and services related to the order the place of jurisdiction is exclusively our registered office in Bergisch-Gladbach.**

**This does not apply in cases of non-property rights claims which are assigned to the district courts regardless of the value of the matter in dispute or for which an exclusive place of jurisdiction exists.**

### **9.2**

**The law of the Federal Republic of Germany is applicable as it is relevant for domestic contractual partners. The UN Sales Convention ( United Nations Convention on Contracts for the International Sale of Goods ) is not applicable.**