

**General Terms and Conditions of Spradow GmbH & Co. KG**  
Status 31.10.2011

**I. General, Recognition of our Terms and Conditions**

- (a) Only transactions with companies as defined in §14 BGB will be completed.
- (b) All goods, services and offers will proceed solely on the basis of these terms and conditions. They are a component of all contacts that we conclude with our contracting partners for goods or services that we provide. They also apply to all future goods, services or offers made to the customer, even if they are not separately agreed to again.
- (c) References made by the customer to its terms and conditions or terms of purchase are inapplicable even if we do not expressly reject them. Even if we make reference to correspondence that includes the terms and conditions of our customer or a third party or makes reference to them, this does not constitute assent to the applicability of these terms and conditions.
- (d) Deviations from these terms and conditions require our expressed, written consent in order to be enforceable.

**II. Offers, Order Confirmations, Conclusion of Contracts**

- (a) Our offers are subject to change and non-binding if they are not explicitly labelled as binding. Offers remain valid for the period stated on the offer.
- (b) The written purchase contract, including these general terms and conditions, is solely authoritative for the legal relationship between us and our contracting partners. It recapitulates entirely all agreements between the contracting parties concerning the object of contract. Oral agreements made before the conclusion of this contract are not legally binding and oral agreements between the contracting parties will be replaced by the written contract, to the extent that, in each case, it does not proceed from them that they continue to be in force. Amendments and modifications to the agreements made including these general terms and conditions must be affected in writing to be valid. With the exception of executive management or their proxies, employees of the seller are not authorised to make oral agreements deviating from the terms given here. The requirement of written form is satisfied by fax transmission, not by telecommunications, especially not by e-mail. The conclusion and content of the contract will be confirmed by the order confirmation notice. This applies also to amendments or modifications or side-agreements. An invoice can serve as a substitute order confirmation.
- (c) Drawings, illustrations, dimensions, weights and all other data are only binding if this is expressly arranged in writing. They are not a guarantee of characteristic qualities, but instead descriptions or designations of the good or service. Variations common to the industry and variations that are the result of legal regulations or represent technical improvements, as well as replacement of components through parts of equivalent type and quality are permissible, to the extent that they do not compromise the utility of the good or service for the purpose specified in the contract.
- (d) Any drawings or documents issued remain our property and must be returned unsolicited if a contract is not concluded. The contracting partner may not use these objects nor make them accessible to third parties, disclose their contents to third parties, use them or reproduce them without our expressed consent. The contracting partner must, on the seller's request, return these items in their entirety to it and destroy any copies that may have been made, if they are no longer needed in regular and proper business operations or if negotiations do not lead to the conclusion of a contract.

**III. Price and Payment**

- (a) The prices we mention in our offers are non-binding unless we expressly identify them as binding. To the extent that nothing else is indicated by the concluded contract, the prices apply ex works (our factory) and exclude packaging, shipping costs, insurance and customs. All prices exclude VAT. The VAT will be billed separately in the legally mandated amount.
- (b) To the extent that the agreed-upon prices are based on our list prices and delivery should only be completed more than four months after the conclusion of the contract, our list prices at time of delivery will apply (in each case minus an agreed-upon percentage or fixed amount discount).
- (c) Billed amounts are due and payable within thirty days without any discount, to the extent that nothing else is agreed upon in writing. The payment date is determined by the date on which the payment is received at our premises. If the customer does not pay by the due date, the outstanding amounts will be charged interest starting on the due date in the amount of eight percentage points above the prime interest rate: The assertion of higher interest rates and further damages in the event of default is unaffected by this provision.

(d) An arranged discount deduction is impermissible, to the extent that older claims for the purchase price from due and payable billing statements have not yet been settled.

(e) We are entitled to first apply payments to the customer's older debts, even if the customer has provisions to the contrary. We can credit payments first to costs, then to interests and then to the main claim.

(f) If, after the contract is concluded, it becomes apparent on the basis of overdue claims, that our claim to counter-considerations would be endangered through lack of ability to pay on the part of the customer, we are entitled to refuse to fulfil the contract until the customer effects payment or provides security for the payment. We are entitled to withdraw from contracts if the customer allows a reasonable grace period for payment of outstanding claims or provision of a security to pass without action. Any reciprocal rights of the customer are not affected by this.

#### **IV. Offsetting, Right of Retention, Prohibition of Assignment**

(a) The customer is entitled to offset and retention only with respect to undisputed or legally established claims. Reductions based on complaints of defects are subject to the same restrictions.

(b) We are entitled to offset claims and obligations owed to us. This applies also to companies in the customer's corporate group.

(c) The customer's rights deriving from this contract and these terms and conditions are not transferrable.

#### **V. Delivery Period**

(a) Dates and periods we name are non-binding unless otherwise expressly specified. Blanket orders require individual agreements for the delivery period.

(b) Delivery periods begin on the day on which the customer receives our order confirmation. Compliance with our delivery obligations assumes regular and proper fulfilment of the customer's obligations. This includes, for example, the documents, parts, necessary information and approvals that must be supplied, or – where agreed- the payment of down payments.

(c) The date of delivery is the day on which the good is reported to the customer as ready for pick-up. If shipping is owed, the date of deliver is the date on which the goods are given over to the person responsible for transport.

(d) Partial shipments are permissible to a reasonable extent. Furthermore, deviations in quantity of up to +/- 5 to 10% are not deemed as insufficient quantities, if they are special parts or custom productions.

(e) We are not responsible for delays in delivery and performance owing to force majeure. We are released from the obligation of performance for the duration of these conditions. However, we are obligated to immediately inform the customer of these conditions and fulfil our obligations as promptly as possible. In these cases, the customer only has a right to withdraw if the agreed upon delivery period, plus the duration of the force majeure event, plus an appropriate grace period has been exceeded or if we have communicated to the customer that we absolutely cannot provide the good or service.

(f) If we come into default of delivery for a delivery period agreed upon in writing, the customer can withdraw from the contract after setting a grace period of at least 14 days.

(g) If the customer does not declare during the grace period whether or not it continues to insist on fulfilment or wishes to make use of its right to withdraw and this declaration does not also reach us within an additional grace period of at least 7 days, we are entitled to withdraw from the contract. The customer's right to demand compensation for damages according to Sections VIII and IX, remains unaffected.

#### **VI. Transfer of Risk**

(a) The risk transfers to the customer as soon as the good leaves our factory. This is the case regardless of whether the client or a company contracted by the customer picks up the good or we ship the goods to the customer. If shipping or pick-up is delayed or frustrated through no fault of ours, the risk transfers to the customer when readiness for pick-up and/or shipping is reported.

(b) The customer is responsible for storage costs after the transfer of risk. If we store the goods, the storage costs will be 0.5% of the invoiced value of the objects intended for delivery that must be stored per completed week. The assertion and the proof of additional or lesser storage costs remains reserved.

(c) We will only insure the shipment against theft, breakage, transport damages, fire damage, water damage or other insurable risks at the expressed request of and cost to the contracting party.

(d) Delivered objects are, even if they evince insignificant defects, to be accepted by the customer irrespective of the rights proceeding from Section VIII.

### **VII. Extended Reservation of Title**

(a) The delivered goods remain our property until the customer settles all obligations from the existing business relationship.

(b) Processing and restructuring is always completed on our behalf as manufacturers, however, without any obligation to us. If our ownership is extinguished by admixture, then it is agreed here and now, that the customer's co-ownership of the entire object is assigned to us in proportional share of the invoiced value. The customer will protect our property or co-ownership free of charge.

(c) The customer is obligated to protect our ownership/co-ownership against decrease in value or loss with the due diligence of a regular and proper merchant, even after re-sale to its customers.

(d) The customer is entitled to process and sell the object under reservation of title in regular and proper business transactions. However, pledging and transfer for purposes of providing a security is prohibited. The customer assigns in their full scope the rights to the good under reservation of title and with all incidental rights deriving from re-sale or another legal basis to us as a security.

(e) In the case that third parties interfere with the good under reservation of title, the customer must inform them of our ownership and must report this immediately. The customer is responsible for any costs and damages.

(f) In the case of default of payment by the customer, we are entitled to withdraw from the contract and recover the good under reservation of title at cost to the customer and if necessary demand that the customer's legal rights to recover against third parties be assigned to us. Our right to compensation for damages or restocking fees is unaffected by this. The like applies in the event that the customer breaches our contract.

(g) We must partially release the securities owed to us on demand from the customer, if the realisable value of your securities exceeds the value of claims to be secured by more than 20%.

We will select the securities to be released.

### **VIII. Warranty, Material Defects**

(a) The warranty period will be one year from delivery or, to the extent that acceptance is required, from acceptance.

(b) We are liable for our products being free of fabrication defects and material defects and that they possess the properties provided for in the order confirmation. Reserving those provided for in these general terms and conditions or those require by provisions of law, we accept no warranties, especially not for a quality of an average kind and class, or for suitability for a specific purpose. We only grant warranties if these are explicitly identified as warranties in writing. Absent any expressed written agreements, variations common to the industry are not regarded as defects. The statements we make in catalogues, prospectuses and price lists concerning the object of delivery or the service are only approximate values, if the order confirmation does not specify otherwise. Excluded from these are written agreements that explicitly state otherwise. Insignificant deviations compared to the catalogues or goods previously delivered are not considered defects. The customer is responsible for reviewing the ordered good's suitability for the intended use. Unsuitable goods are only deemed defective, if we have assured the customer in writing that it will be suitable. Wear on parts subject to wear in the framework of use customary for the industry is not considered a defect. If our instructions concerning assembly, construction, operations or maintenance are not followed, a defect claim only exists if the customer can demonstrate that customer did not cause the defect and that it did not exist at the time of the transfer of risk. The like applies if improper consumables are used and/or modifications are made to the products.

(c) The objects must be carefully inspected immediately after deliver to the contracting partner or to a third party specified by it. They are deemed accepted if we do not receive a written notice of obvious defect or other defects that were not immediately recognised in an immediate, careful inspection or within seven working days of discovery of the defect or any earlier date on which the defect became apparent to contracting partner in normal use of the delivered object without any detailed inspection. On our request, the delivered object subject to the complaint of defect must be returned to use free of freight charges. If the complain of defect proves justified, we will reimburse the costs of the least expensive shipping route; this does not apply to the extent that the costs increase because the object of delivery is located at a location other than the location of its intended and proper use.

(d) If the good was not yet delivered to an end user, then justified and properly reported defects obligate us, at our discretion, to remediate the defects through repair or to deliver a new object of delivery or parts thereof. In the case of remediation of defect, we are obligated, to bear the costs of all

expenses necessary for remediation of defects, especially costs for transport, travel, work and material costs, to the extent that and insofar as they are not derived from fact that the object of purchase is stored at a location other than the place of fulfilment.

If replacement deliveries or remediation fail, then the customer can only demand a reduction of compensation or, at its discretion, withdraw from the contract. The right of withdrawal and claim to compensation for damages in place of the entire performance only exists to the extent that the defect is not insignificant. The customer's right to claim compensation for damages is governed by Section IX.

(e) If the good was already delivered to the end-user, the customer is strictly, at most, entitled to assert those claims for compensation for damages that its clients have asserted against it.

(f) If the customer takes back the goods on a goodwill basis without consulting with us first, any claims for compensation for damages are excluded. Additionally, the customer is not entitled to withdrawal with respect to us, if it was required to recover the good because it did not properly meet its obligation of subsequent fulfilment, especially in the case that it allowed the grace period it set for subsequent fulfilment pass without action. The customer must immediately inform us in advance and in writing of its customer's demand for subsequent fulfilment and communicate to us the intended form of subsequent fulfilment as well as the approximate costs therewith associated. The customer is required to act in our interest and keep the sum of the expenses in the sense of § 439 Para. 2 BGB [German Civil Code] as low as possible and follow any corresponding suggestions that we may make, that would provide for a less expensive variant for subsequent fulfilment.

(g) Delivery of used goods arranged with the customer in an individual case will only proceed under exclusion of any warranty for material defects.

#### **IX. Liability Exclusion**

(a) Our liability to provide compensation for damages is restricted according to the specifications of this section, regardless of the legal grounds, especially those of unfeasibility, default, defective or incorrect shipment, breach of contract, failure to meet obligations in contract negotiations and impermissible actions, to the extent that in each case there is culpability on our part.

(b) We are not liable in the event of simple negligence of our executive bodies, legal representatives, employees or other persons employed on a temporary or substitute basis, to the extent that there is no failure of essential contractual obligations. Essential contractual duties are those obligations to deliver and install delivery objects that are free of significant defects as well as obligations to consult, protect or provide safekeeping, that are meant to make it possible for the contracting partner to use the object of delivery in conformity with the contract or are aimed at protecting the life and limb of the contracting partner's personnel or protecting the partner's property from significant damages.

(c) To the extent that we are basically liable for compensation for damages in accord with Section IX.(b), this liability is restricted to damages which we have foreseen as a possible consequence of breach of contract when the contract was concluded or which we should have foreseen under exercise of due diligence customary to our industry. Indirect damages and subsequent damages that result from defects in the delivery object are only eligible for compensation to the extent that such damages are typically expected in the proper and usual use of the delivery object.

(d) In the case of liability for simple negligence, our obligation to compensate is restricted to property damages and resulting additional damages to material assets to an amount of 500,000 EUR per loss event, even if the event involves the breach of essential contractual obligations.

(e) The liability exclusions and restriction stated above apply in the same scope to our offices, legal representatives, employees and other persons employed temporarily or on a substitute basis.

(f) To the extent that we give technical information or act as consultants, and this information or advice is not included in the scope of performance that we specified in the contract and are obligated to provide, this is done free of charge and under the exclusion of liability of any kind.

(g) The restrictions of this Section IX do not apply to our liability in cases of intentional acts, guaranteed characteristics, harm to life, limb or health or under the German Product Liability Act.

#### **X. Use and Commercialisation Rights, Protected Right**

(a) If the customer orders that we make goods to its specifications or instructions, it is liable to us in the framework of its obligations for assuring that the goods and services ordered are free from the protected rights of third parties. To this extent it releases us from all corresponding claims and must reimburse us for any damages that may arise.

(b) Should we provide the customer with products, assembly groups, individual parts, drafts, installation suggestions, data sheets or other drawings and documents either singly or together with the goods, we reserve ownership on all protected rights or use rights. The customer is only entitled to

use within the framework of the purchase contract; it is especially not entitled to reproduce such items, to make them accessible to third parties, or use them for its own purposes that go beyond those secured by the contract.

#### **XI. Confidentiality, Data Protection**

(a) All information collected in connection with this contract is deemed confidential, unless otherwise agreed in writing.

(b) The confidentiality mentioned in (a) continues to apply after the contractual relationship ends.

(c) We will save and process all data received concerning the customer in connection with executing this contract for its own purposes under due consideration for the regulations of the German Federal Data Protection Act. Under no circumstances will it be shared with third parties without consent.

#### **XII. Place of Fulfilment, Court of Jurisdiction, Applicable Law**

(a) The place of fulfilment for all obligations deriving from the contractual relationship is Schloss Holte-Stukenbrock, to the extent nothing else is specified.

(b) For all disputes arising from the contractual relationship, legal action may only be brought - if the contracting partner is a registered merchant, a legal person under public law or a special asset fund under public law - before the court responsible for Schloss Holte-Stukenbrock. Compulsory legal provisions concerning exclusive courts of jurisdiction are unaffected by this rule. We are also entitled to bring legal actions before the court that the customer's headquarters.

(b) For the general terms and conditions and the all legal relationships between the customers and us, the law of the Federal Republic of Germany applies exclusively. The United Nations Convention on the International Sale of Goods from April 11<sup>th</sup>, 1980 (CISG) does not apply.

#### **XIII. Severability Clause**

Should a provision of these general terms and conditions or portions thereof, or a provision in the framework of other agreements prove unenforceable, the enforceability of all other provisions or agreements will not be affected. It is agreed that, in the place of the affected parts or provisions, the provisions that the contracting parties would have agreed upon according to the commercial goals of the contract and the purposes of these general terms and conditions, had they been aware of the unenforceability. To the extent that the contract or these general terms and conditions should contain loopholes, those legally enforceable rules are deemed here and now as agreed, that would be necessary to close these loopholes that the contracting partners would have agreed upon according to the commercial goals of this contract and the purpose of these general terms and conditions, if they had recognised this loophole.