

# Terms and Conditions of Sale and Delivery of Company Monoflo Snap-Box Produktions GmbH & Co. KG

## I. General information

The present Terms and Conditions of Business constitute arrangements additional to any and all such contractual agreements as shall already have been concluded with our Customers. We have endeavoured in this regard to secure a balanced relationship serving the interests of all involved. Please appreciate that we are unable to exhaustively give consideration to the specifics of each and every contractual relationship within the framework of negotiation procedure. Certain principles shall apply uniformly for all contractual agreements. Only in this manner, is such rational approach possible as shall also serve the interests of the Customer.

## II. Protective clause

Our General Terms and Conditions shall be deemed applicable to the exclusion of all others. We are unable to recognise such terms and conditions of the Customer as shall be of conflicting, differing or supplementary content unless we shall have expressly approved their applicability. Performance differing from established arrangement, and more specifically, subsequent requests, shall be required to have been agreed in writing. Our General Terms and Conditions shall also apply where we shall render performance being aware of the existence of such terms and conditions of the Customer as shall be of conflicting, differing or supplementary content.

## III. Offer

- Orders for our attention shall be taken to constitute a binding offer. We shall be at liberty to accept such offers within a period of one month by despatching the merchandise thereby ordered or a confirmation of order.

Our offer shall be subject to amendment and is non-binding. ...

## IV. Scope and point-in-time of performance

- Scope of performance shall be dictated strictly by the terms of the confirmation of order or the offer, as the case may be. We shall endeavour to adhere to the period proposed under the confirmation of order for execution of performance. We shall furnish notification of any delays incurred. Where the point-in-time proposed shall be exceeded by more than four weeks, the Customer shall be at liberty, having issued written approval of an additional period of grace of two weeks, to withdraw from the Contract. Claims of more far-reaching content shall not be entertained where we shall be in a position to furnish evidence to the effect that we may not be held accountable for wilful or grossly negligent conduct or loss of life, physical injury or damage to health for reasons of negligent breach of obligation. The Customer shall not be at liberty to withdraw from the Contract where we shall be in a position to furnish evidence to the effect that we may not be held accountable for the delay. Same shall apply where we shall be prevented from adhering to deadline for reasons of Acts of God, strike, lockout or for reasons of orders, conditions, etc. having issued from an official source. Performance of Contract shall proceed as soon as such obstacle shall have been eliminated.
- Where performance of Contract shall be prevented by such circumstances as may have been brought about by the Customer, we shall be at liberty, having duly issued warning without success, to withdraw from the Contract and to demand compensation in lieu of performance. We shall likewise be at liberty to reject performance where the goods ordered shall no longer be available. We shall undertake, in such event, to inform our Customers accordingly and at once and to furnish refund in respect of any and all such consideration as shall already have been forthcoming.
- We shall be at liberty, in the event of delay in acceptance to demand reimbursement of any and all such cost as shall have been incurred thereby by us for fruitless preparation of work, delivery, storage, etc.
- Transfer of risk in respect of loss of goods to be delivered, damage to same and suchlike shall take place at the point-in-time of transfer to the Customer or to said Customer's appointed agent. Where despatch shall have been agreed, said risk shall transfer upon despatch and, in the event of delayed acceptance, at such point-in-time of delivery as shall have been agreed.

## V. Performance provisions, compensation

- We shall reserve the right either to withdraw from the Contract and to demand compensation in lieu of performance or to render service strictly on a cash-in-advance or cash-on-delivery basis in the event of suspension of payments or accrual of arrears of payment, applications for insolvency or for court protection from creditors and where it shall become known that compulsory enforcement measures shall have been implemented against the Customer.

Where payment-in-advance shall have been refused by the Customer, we shall be at liberty to withdraw from the Contract and to assert claim for compensation in lieu of performance.

- In the event of withdrawal, we shall be at liberty to demand lump-sum compensation in amount equivalent to 20% of the total value of Contract. Both we and the Customer shall be at liberty to furnish evidence of a higher or lower concrete amount of loss/damage, which amount shall then replace the lump-sum amount of compensation.

## VI. Prices and payment

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## VII. Liability for defective performance

- The goods delivered shall be examined immediately upon receipt for defects and completeness. In normal commercial business, we are to be notified of defect immediately in writing, otherwise, the goods shall be deemed to have been accepted as perfect. Proper and correct examination shall be taken to incorporate testing for grading curve and possible soiling or negative influences of the elements (dampness, ice, snow and lump formation).

- Initially, the Customer shall not be at liberty to assert further claims. Where it shall transpire, however, that a second attempt to effect delivery or repair shall fail, and evidence of continued defect be forthcoming, the Customer shall be entitled to reduce the purchase price to a reasonable level or to withdraw from the Contract. No further claims shall be entertained where we shall be in a position to furnish evidence to the effect that we may not be held accountable for wilful or grossly negligent conduct or loss of life, physical injury or damage to health for reasons of negligent breach of obligation.
- The deadline for assertion of claim in respect of defect shall be one year as of handover or as of the date upon which delay in acceptance shall take effect.

## VIII. Retention of title

- The goods to be delivered shall remain our property until such time as payment shall have been effected in full. Where they shall be sold on or assigned as security within the framework of normal conduct of business, we shall be entitled to remuneration from the third party/parties in question.
- The treatment and processing of the goods shall be deemed to have been carried out on our behalf. Retention of title shall prevail in respect of the goods thereby treated or processed, as the case may be. Where said goods shall be processed or mixed with other such goods as shall not belong to us, we shall be deemed to have acquired co-title to the product thereby created, namely in measure proportionate to the value of the goods as a percentage of the other goods thereby processed at the point-in-time of processing. Any and all such claims against a third party as shall derive from combination of the goods with real property shall be deemed assigned to us.

## IX. Jurisdictional venue

Where legal dispute shall prove necessary for reasons deriving from or pertaining to the contractual relationship, such dispute shall, where the agreement in respect of jurisdictional venue shall be found to be admissible, be brought before the Local Court [Amtsgericht] of Bensheim or before the District Court [Landgericht] of Darmstadt.

## X. Concluding provisions

Should it transpire that one of the foregoing provisions shall be ineffective, it shall be replaced by the pertinent provision applicable under law. The remaining provisions contained under our General Terms and Conditions of Business shall not, however, be thereby affected.

(Status as at: 05.08.2011)