

# General Terms and Conditions

## 1 Scope of Application

- 1.1 All deliveries and services of Chrosziel GmbH („Chrosziel“) are subject to these General Terms and Conditions unless otherwise agreed upon in writing with the customer in a particular case.
- 1.2 In case of ongoing business relations of Chrosziel with the customer all future deliveries and services are subject to these General Terms and Conditions.
- 1.3 General terms and conditions of the customer shall apply only insofar as their content is identical to that of Chrosziel’s General Terms and Conditions or if Chrosziel expressly accepts them in writing. This shall apply even in the event that Chrosziel unreservedly renders its services knowing that any of the customer’s terms and conditions conflict with or deviate from Chrosziel’s General Terms and Conditions.
- 1.4 All agreements and legally relevant declarations of the parties must meet the legal requirement of written form in order to be applicable.

## 2 Prices

All prices shall be deemed to be ex works of Chrosziel excluding packing costs, shipping charges, insurance premiums and fees for export, transit, import and other permits, services charges by banks and authorities plus any applicable value added tax.

## 3 Delivery and Services

- 3.1 Delivery periods shall begin upon reception of all documents, necessary for the performance of the order, of the customer by Chrosziel. A delivery deadline is deemed have been met, if, prior to said deadline, the goods have left Chrosziel or Chrosziel has reported readiness for dispatch. The delivery deadline is subject to correct and timely reception of supply by Chrosziel itself.
- 3.2 If the delivery is delayed due to circumstances for which the customer is solely or by far predominantly responsible or for which neither the customer nor Chrosziel is responsible, the delivery period is prolonged by the period during which said circumstances prevail plus an appropriate start-up time. The customer will be informed promptly.
- 3.3 If the delivery is delayed due to the fault of Chrosziel, the customer is entitled to compensation for default. The compensation for default equals per expired week ½ percent, but in total not more than 5 percent of the invoice value of the deliveries and services which are subject of the default. Claims exceeding this level are excluded unless the default is due to, at least, gross negligence of Chrosziel.
- 3.4 Chrosziel is entitled to partial delivery to a reasonable extent.

- 3.5 Deliveries and services are subject to deviations as far as customary in trade, especially in regard to, but not limited to, quality, color, equipment, gages and weights. Designs and specifications are subject to alterations as far as reasonable for the customer upon consideration of its interests.

#### **4 Packing & Shipping**

- 4.1 Unless otherwise agreed upon packing shall be charged for separately by Chrosziel to the customer. The customer is entitled to return transport packing to Chrosziel at the location of the delivery. This right to return must be executed either by returning the packing immediately after the delivery of goods or by providing the packing for pick up at the time of a later delivery. A separate remuneration regarding the freight costs is charged for the transport of the packing. The customer is entitled to return transport packing at its own costs at the seat of Chrosziel during the business hours of Chrosziel. Returned transport packing must be clean, free of foreign substances and sorted according to different packings. If these conditions are not met Chrosziel is entitled to charge resulting incremental costs for the packing disposal.
- 4.2 Unless otherwise agreed upon, Chrosziel chooses packing and dispatch type at its own discretion.
- 4.3 On handover of the goods to the contractor in charge of transport, the risk shall pass to the customer – even if freight paid delivery is agreed upon. If the dispatch is delayed due to circumstances for which the customer is responsible the risk shall pass to the customer upon appropriation to the contract of the to be shipped goods and information about the readiness for dispatch.

#### **5 Reservation of Title**

- 5.1 Chrosziel shall retain title to all goods until full payment of any and all receivables (inclusive of any and all balances on current accounts) due from the customer to Chrosziel arising from their business relation, inclusive of any and all future receivables arising from any contract executed contemporaneously or subsequently.
- 5.2 If a liability of Chrosziel based on a bill of exchange is created due to the payment by the customer, the reservation of title, inclusive of its agreed upon special forms, and other agreed upon securities for the payment are not forfeited until the bill of exchange is honored by the customer as drawee.
- 5.3 If the remuneration is not paid completely by the customer, Chrosziel is, after a reasonable grace period has been set and expired to no avail, entitled to take back the goods. If Chrosziel exercises its right and sells the goods by private treaty or by auction, the proceeds generated by this sale will be applied towards the outstanding receivables held by Chrosziel against the customer up to the agreed upon remuneration notwithstanding additional claims.
- 5.4 If third parties attach or otherwise seize the goods, the customer shall inform the third parties about the existing title of Chrosziel and shall notify Chrosziel without undue

delay. The customer bears all costs necessary to lift the attachment or seizure and to recover the goods, as far as these costs can't be recouped from a third party (intervention-costs). The customer may neither pledge the goods nor assign the goods by way of security.

- 5.5 The customer is entitled to resell the goods in the ordinary course of business. It hereby assigns to Chrosziel any and all claims including all ancillary rights which it acquires against the purchasers as a result of the resale. If the goods are resold together with other goods, which are not covered by Chrosziel's reservation of title, the customer's claim against the purchaser in an amount equal to the price agreed between the customer and Chrosziel will be deemed assigned. The customer is entitled to collect any receivables it holds against the purchasers, even after the assignment. Chrosziel's authority to collect such receivables itself remains unaffected thereby. Nevertheless, Chrosziel agrees not to collect such receivables, as long as the customer duly discharges its payment obligation. Chrosziel may demand that the customer discloses the assigned claims and the identity of the debtors, reveals all information required for debt collection, furnishes any documents related thereto and informs the debtors about the assignment.
- 5.6 Upon request Chrosziel will release securities selected at its own discretion, as far as the value of the securities continuously exceeds the to be secured total debt by more than 20%.

## **6 Terms of Payment**

- 6.1 Payments shall be made by the customer exclusively to Chrosziel and in cash without any deductions.
- 6.2 As a rule, Chrosziel accepts bills of exchange and cheques only on account of performance. Therefore, bills of exchange and cheques are deemed payment only after their successful cashing. Bill and discount charges shall be borne by the customer.
- 6.3 Payments received by Chrosziel will always be applied towards the oldest, due invoice plus any default interest that might have accumulated based on it, even in light of a deviating specification by the customer.
- 6.4 Invoices shall be due from the date of the invoice and payments shall be made within 30 days from the invoice date, unless otherwise agreed upon.
- 6.5 If the customer is in delay Chrosziel is entitled to claim interest at a rate of 3 percentage-points above prime rate. The right to claim further damages is reserved.
- 6.6 Failure to comply with the terms of payment results in immediate maturity of all receivables held by Chrosziel. In addition, Chrosziel is entitled to demand prepayment for not yet fulfilled deliveries and furthermore is entitled to rescind the agreement after a grace period of reasonable length has been granted and lapsed. The same applies, if the customer made false statements regarding its credit worthiness or if the customer's credit worthiness is objectively missing after conclusion of the agreement and the claim of Chrosziel is at risk.

## **7 Obligation to Inspection**

- 7.1 The customer is obliged to inspect the goods immediately upon receipt and notify Chrosziel immediately, not later than 14 days after receipt of the goods, in writing of any identifiable defects found within the scope of the aforesaid inspection (“apparent defect”).
- 7.2 Defects not identifiable within the scope of an orderly and proper inspection in accordance with sec. 7.1 above (“unapparent defects” / “hidden defects”) shall be reported in writing by the customer to Chrosziel immediately, not later than 7 days after their discovery.
- 7.3 Notifications of defects are deemed timely if posted within the time limit.
- 7.4 If the customer fails to make a timely notification of defects, claims based on these defects are excluded, unless Chrosziel fraudulently concealed the relevant defect or assumed a corresponding guarantee.

## **8 Defects**

- 8.1 Defects as to quality and defects as to title shall be remedied by Chrosziel within a reasonable period of time (subsequent performance). Chrosziel shall have the option of remedying the defect either by correcting the defect (cure) or by delivering a non-defective replacement (substitute delivery). If subsequent performance fails, is unreasonable for the customer, is refused by Chrosziel or if it is justified for other reasons taking into account the interests of both parties, the customer is entitled to statutory rights without restriction. However, a right of rescission does not exist if the defect is not of substantial nature.
- 8.2 The rights of the customer as to defects are forfeited if the customer without the consent of Chrosziel changes the goods or has them changed by others, unless it can prove that the defects in question have not been caused in whole or in part by such alterations and that the subsequent performance is not made more difficult by the alterations.
- 8.3 Chrosziel is not liable for defects as to quality caused by normal wear and tear, external influences or operating errors.

## **9 Liability**

- 9.1 Chrosziel shall be liable for damages in accordance with the applicable statutory provisions for personal injury and for damages pursuant to the Product Liability Act.
- 9.2 For other damages Chrosziel shall – unless provided otherwise in a guarantee assumed by Chrosziel – be liable according to the following provisions:
1. Chrosziel shall be liable according to the applicable statutory provisions for any damages caused by fraudulent behavior and for any damages caused by

intentional or grossly negligent conduct of legal representatives or executives of Chrosziel.

2. Chrosziel shall be liable for damages whereby such liability will be limited to the amount deemed contractually typical and foreseeable
  - a) for any damages resulting from slight negligent breach of material contractual obligations or of duties, whose fulfillment is a fundamental requirement for the orderly implementation of this Agreement and whose fulfillment the other party may rely on as a rule (cardinal duties),
  - b) and for any damages caused by grossly negligent or intentional conduct of persons employed by Chrosziel in performance of its obligations but in absence of any breach of material contractual obligations or duties, whose fulfillment is a fundamental requirement for the orderly implementation of this Agreement and whose fulfillment the other party may rely on as a rule (cardinal duties).
3. In accordance with sec. 9.2.2 lit. a) above Chrosziel shall not be liable for any loss of profit, indirect damages, consequential damages and third party claims except for claims based on the infringement of industrial property rights.

9.3 In all other cases, any and all liability by Chrosziel shall be excluded.

## **10 Statute of Limitations**

- 10.1 Unless a case of fraudulent behavior is given, the customer's claim for subsequent performance due to
  - a defect as to quality or
  - a defect as to title other than a third party's claim for return based on ownership or on another proprietary right or another right in rembecomes statute-barred within twelve months upon delivery of the goods.
- 10.2 Unless a case of fraudulent, intentional or grossly negligent behavior is given, the customer's claim for damages due to
  - a defect as to quality or
  - a defect as to title other than a third party's claim for return based on ownership or on another proprietary right or another right in rembecomes statute-barred within twelve months upon delivery of the goods. This limitation period shall not apply if the respective damage of the customer is a personal injury. Claims based on personal injury become statute-barred within the statutory limitation period.
- 10.3 Unless a case of intentional or grossly negligent behavior is given, the customer's claims based on a breach of contract other than a defect become statute-barred within twelve months upon accrual of the claim. This limitation period shall not apply if the respective damage of the customer is a personal injury. Claims based on personal injury become statute-barred within the statutory limitation period.
- 10.4 Rescission or reduction of price are excluded if the customer's claim for performance or the customer's claim for subsequent performance have become statute-barred.

## **11 Recourse within the Delivery Chain (§ 478 BGB)**

- 11.1 In case the customer or an entrepreneur (intermediate buyer), who has acquired the goods by way of a delivery chain reaching via the customer to Chrosziel but not involving any consumer, sells the goods in the course of its business operations to a person purchasing these goods for a purpose which can not be attributed to its commercial or independent professional activity (consumer) and the consumer asserts claims based on defects of the goods, the customer shall be entitled to the recourse rights against Chrosziel in accordance with the relevant statutory provisions (sec. 478, 479 BGB) – subject to sec. 7.
- 11.2 The reimbursement of expenses incurred by the customer due to its subsequent performance in relation to the intermediate buyer or the consumer (sec. 478 para. 2 BGB) may only be asserted on basis of the prime costs.

## **12 Set-Off / Retention / Assignment**

- 12.1 Chrosziel shall be entitled to set-off and retention rights to the statutory extent.
- 12.2 The customer shall be entitled to set-off against his own claims or to assert a right of retention only if and in so far as his claims are deemed final and absolute, undisputed or acknowledged.
- 12.3 Assignment of claims against Chrosziel shall be excluded.

## **13 Place of Performance, Jurisdiction and Applicable Law**

- 13.1 Place of performance shall be Heimstetten (Germany).
- 13.2 Place of jurisdiction for both the customer and Chrosziel shall be Munich (Germany). However, Chrosziel shall also be entitled to assert its rights at the customer's seat.
- 13.3 The legal relationship between the customer and Chrosziel shall be governed by the law of the Federal Republic of Germany under exclusion of the Vienna United Nations convention on contracts for international sale of goods of April 11, 1980.