

## GENERAL TERMS AND CONDITIONS OF DELIVERY

### **Section 1. General and scope**

(1) These general terms and conditions of delivery shall form the basis of all deliveries or services. Deviating provisions of the Buyer shall not be the subject matter of the contract unless they are accepted in writing by the Supplier. If the Supplier's order confirmation deviates from the Buyer's provisions, these terms and conditions of delivery shall apply provided that an objection is not lodged by the Buyer within one week.

(2) These terms and conditions of delivery also apply to all future transactions with the Buyer in so far as these are legal transactions of a related nature.

### **Section 2. Quotations and conclusion of an agreement**

(1) The Supplier's written quotations - unless provided to the contrary – shall be binding for 30 days from the date of quotation.

(2) In so far as an order is to be regarded as an offer in accordance with Section 145 of the German Civil Code, we can accept this within two weeks. This can be by means of written, verbal or telephone confirmation and also implied by delivery.

### **Section 3. Price agreements**

(1) In the absence of specific agreement, the prices ex-works Gelsenkirchen excluding freight charges and packing costs shall apply. Within the meaning of Section 310 (1) of the German Civil Code, the Supplier shall retain the right to reasonable price adjustments vis-à-vis legal entities, in line with modified wage and material costs according to the prices applicable on the day of delivery. Value added tax shall be added to the prices at the prevailing statutory level.

(2) A subsequent reduction in the order quantity or a decrease in the agreed call-off amounts shall in principle not be permitted. In the event that the Supplier accepts appropriate modifications in an individual case, the unit prices may increase on the basis of higher pre-production and start-up costs. The costs incurred as a result shall be invoiced to the Buyer.

(3) In the case of orders with a net merchandise value below €100.00, a processing fee amounting to €15.50 net shall be charged. A surcharge of 15% on the net merchandise value shall be effected for special lengths that deviate from the standard production lengths. Domestic deliveries with a net merchandise value from €510.00 shall be carried out free house. A right to a bulky goods surcharge shall be retained.

### **Section 4. Payment**

(1) Unless otherwise agreed, the purchase price is payable within 30 days of the invoice being issued. A 2% discount shall be granted in the event of payment within 10 days from date of invoice. Interest on payments in arrears amounting to 5% above the respective per annum base interest rate shall be charged. Interest amounting to 8% above the base interest rate shall be charged to legal entities within the meaning of Section 310 (1) of the German Civil Code, from the date of exceeding the time limit.

(2) If the Supplier becomes aware of circumstances that place the Buyer's solvency in doubt, accounts receivable shall immediately become due, contrary to the above-mentioned payment terms. In this case, the Supplier shall be entitled to only carry out other deliveries not yet made against advance payment or the provision of adequate guarantees. If the Buyer offers no such payments, the Supplier may request compensation instead of performance after an appropriate final deadline and cancel the contract if it has not yet been fulfilled.

### **Section 5. Offsetting and right of retention**

The Buyer is only entitled to offset if its counterclaims have been declared legal or are uncontested. The Buyer is only authorised to exercise a right of retention in so far as its counterclaim refers to the same contractual relationship.

### **Section 6. Delivery times**

(1) The delivery time shall result from the agreements between the parties to the contract. Its compliance by the Supplier shall presuppose that the Buyer has fulfilled all obligations incumbent on him in accordance with the contract prior to delivery or as a condition for the latter, such as the payment of a deposit. The delivery time shall be extended appropriately if not all of the aforesaid prerequisites are complied with in good time. The right to claim that the agreement is not fulfilled is retained.

(2) Compliance with the delivery date shall be subject to correct and prompt self-supply. The delivery date shall be complied with if the delivery item has left the Supplier's plant before its expiry or readiness for dispatch has been notified to the Buyer. The Supplier has the right to make deliveries by instalments or carry out part performance.

(3) If the Buyer is in default of acceptance, or it is culpable of infringing other obligations to cooperate, we are entitled to request reimbursement for damage incurred as a result including possible additional expenses. We reserve the right to make more extensive claims. The risk of accidental destruction or accidental deterioration of the object bought is transferred to the Buyer at the point the latter becomes in default of acceptance or is in arrears.

(4) If non-compliance with the delivery time is attributable to an act of God, industrial disputes, official instructions, serious work stoppages or other events that are beyond the Supplier's control, the delivery time shall be appropriately extended. The Buyer shall be advised immediately of this situation and of the change to the delivery time to be expected.

(5) In the event of delayed delivery caused by us unintentionally and not due to gross negligence, we are liable for each complete week of delay to pay an amount of 0.5% of the value of the goods to be delivered as part of a lump-sum compensation for delayed performance, although no more than 5% of the value of the goods to be delivered. Further claims from delay in delivery shall be determined exclusively in accordance with Section 11 of these terms and conditions.

### **Section 7. Transfer of risk, dispatch and packaging**

(1) If the goods are dispatched to the Buyer at the latter's request or in the case of delivery "ex-works", the risk of accidental destruction or accidental deterioration of the goods shall be transferred to the Buyer when the goods are dispatched to the Buyer, at the latest when the

goods leave the plant/warehouse of the Supplier or the plant/warehouse of a primary supplier appointed by the Supplier. This also applies if deliveries are made by instalments and regardless of whether the goods are dispatched from the place of performance or who shall bear the costs.

(2) If dispatch is delayed or does not take place for reasons for which the Supplier is not responsible, the risk shall be transferred to the Buyer with notification of the readiness for dispatch.

(3) Unless specifically agreed to the contrary, the choice of the means of transportation shall lie with the Supplier.

## **Section 8 Technical details, dimensions and tolerances**

(1) Technical details, such as dimensions, weights and output figures, diagrams and drawings, shall only prevail within the limits of normal technical tolerances if they are not expressly confirmed in writing as binding. The Supplier shall retain proprietary rights and intellectual property rights to samples, drawings, cost estimates and other information of a tangible and intangible kind, which were surrendered to the Buyer, even in electronic form; they should not be made available to third parties.

(2) The Supplier shall be obliged to only make information and documents available to third parties with the Buyer's consent where they are designated as confidential by the Buyer.

(3) The Supplier shall retain the right to technical alterations for the purposes of development and they must not be specifically reported to him.

## **Section 9. Reservation of title**

(1) We retain ownership of the goods delivered until full satisfaction of all accounts receivable from the supply contract. This also applies to all future deliveries even if we do not always make specific reference to this. We are entitled to take back the delivery item if the Buyer acts contrary to the agreement.

(2) The Buyer shall be obliged to handle the object bought carefully if ownership has not yet been transferred to him. In particular, he shall be obliged to insure the object bought, at his own costs, for a sufficient amount to cover the replacement cost against theft, fire and water damage (note: only permissible with the sale of high-quality goods). If maintenance and inspection work has to be carried out, the Buyer must carry this out in good time at his own cost. The Buyer may neither pledge nor assign the delivery item as security until binding settlement. The Buyer must notify us in writing immediately if the object delivered is seized, confiscated or subject to other injunctions by third parties. If the third party is not able to reimburse us the legal and out-of-court costs of a legal action in accordance with Section 771 of the German Code of Civil Procedure, the Buyer is liable for the loss suffered by us.

(3) The assertion of the reservation of title as well as the seizure of the delivery item by the Supplier shall not be regarded as withdrawal from the contract. The application for commencement of insolvency procedures regarding the Buyer's assets shall entitle the Supplier to withdraw from the contract and to request the immediate return of the delivery item.

(4) The Buyer is entitled to resell conditional goods by way of normal business transactions. The accounts receivable of the Buyer resulting from the resale of the conditional goods shall be ceded to us by the Buyer in the amount of a final invoice amount agreed with us including the statutory VAT. This cession shall apply regardless of whether the object bought has been resold without or after processing. The Buyer remains authorised to collect the accounts receivable even after cession. Our authority to collect the accounts receivable itself remains unaffected by this. However, we shall not collect the accounts receivable for as long as the Buyer complies with his payment obligations from the revenue collected, is not in default with payments and, in particular, has not made an application to start insolvency proceedings or there has not been a cessation of payments.

(5) The adaptation, processing or alteration by the Buyer of the object bought shall always be carried out in the name of and on behalf of us. In this case, the expectant right of the Buyer to the object bought continues for the altered item. In so far as the object bought is processed with other items not belonging to us, we shall acquire joint ownership of the new item in the ratio of the objective value of our object bought to the other items being adapted at the time of the processing. The same applies in the event of mixture. If mixture takes place in such a way that the object of the Buyer is to be regarded as the main item, it is agreed that the Buyer transfers shared ownership to us proportionally and preserves for us the sole ownership thus created or shared ownership. As security for our claims against the Buyer, the Buyer shall also cede to us such accounts receivable which he has accrued through the association of the conditional goods with real estate; we accept this cession at this point.

(6) We are obliged to release the securities to which we are entitled at the request of the Buyer, in so far as the value does not exceed by more than 20% the claims to be secured.

## **Section 10. Notification of defects**

(1) Notices of defect shall only be permitted in writing and within 8 days from receipt of the goods. Possible damage in transit should be noted on the documents of title on receipt of the goods. Only then shall there be a legal entitlement to compensation or loss adjustment.

(2) Defects to a part of the delivered goods shall not justify a notice of defect for the entire delivery.

## **Section 11. Guarantee and liability**

(1) If the delivery item is defective, the Buyer's claims shall be limited in principle to the Supplier's choice of rectification or replacement. It shall be presumed in the process that the delivery item was demonstrably unusable due to a circumstance before the transfer of risk, due in particular to defective design, bad materials or defective construction or that its usability was seriously impaired. The discovery of such defects must be immediately reported to the Supplier in writing. Defective parts shall become the Supplier's property.

(2) In the event of rectification or replacement, the Supplier shall be obliged - if the notice of defect turns out to be justified - to bear all necessary costs for the purpose of remedying defects, particularly the costs for transportation, labour and materials, in so far as such costs shall not increase because the object bought was taken to a location other than the place of performance, unless this was in accordance with the intended use of the object.

(3) To carry out all the rectifications and replacements that appear necessary to the Supplier, the Buyer must be granted the necessary time and opportunity in accordance with an agreement with the Supplier. If he refuses this, the Supplier shall be released from remedying the defects. Only in urgent cases of a risk to operational safety or defence of excessively severe damage, in which case the Supplier should be notified immediately, shall the Buyer have the right to remedy the defect himself or to have it done by third parties and to request compensation for the necessary expenditure from the Supplier.

(4) If the remedying of defects is not carried out within a reasonable period of time or if the remedying of defects fails, the Buyer shall be entitled to request at his option the cancellation of the contract or the appropriate reduction of the purchase price.

(5) If the object bought lacks a warranted quality within the meaning of Section 434 I 3 of the German Civil Code, the Supplier shall be liable to compensation instead of performance in accordance with the legal provisions. The claims arising from defects shall not relate to wear and tear and not to damage either that arise after the transfer of risk due to handling that is incorrect or not in accordance with the instructions, excessive stress, inappropriate or incorrect use and incorrect assembly or commissioning by the Buyer or third parties, which is not provided for in the contract. Claims arising from defects shall be excluded through modifications incorrectly carried out for instance by the Buyer or third parties, through repair or maintenance work or through rectification.

(6) If the purchase is a commercial transaction for both parties, the Buyer may only assert his warranty rights if he has duly complied with his obligation to inspect and notify defects in accordance with Section 377 of the German Commercial Code.

(7) The Supplier shall only be liable for damage that has not been caused to the delivery item itself if the Buyer asserts claims for compensation that are based on wilful intent or gross negligence by the executive bodies or of senior executives of the Supplier, provided that the precise operating conditions were known when the order was accepted and the Buyer has used the goods appropriately.

(8) Furthermore, the Supplier shall be liable in the event of negligent harm to life, body or health in the event of defects that have been fraudulently concealed or their non-existence guaranteed and in the event of such defects to the delivery item for which there is liability for persons or property damage to privately used objects in accordance with the Product Liability Law. In the event of negligent violation of specific contractual obligations, the Supplier shall also be liable for the gross negligence of non-senior executives and for ordinary negligence, limited in the latter instance to damage that is typical for the contract and reasonably foreseeable. All further claims shall be excluded.

(9) Technical advice shall be provided according to the best knowledge of the Supplier's employees. This service shall be free of charge and shall be based on empirical values, which shall not be regarded as guaranteed. Therefore, they shall not substantiate any claims at all against us or third parties.

(10) The Buyer shall be obliged to satisfy himself regarding the suitability of the products through his own inspection. In the case of external products (merchandise), the Supplier's liability to legal entities within the meaning of Section 310 (1) of the German Civil Code shall

be limited to the assignment of claims to which the Supplier shall be entitled to against the sub-suppliers, provided that obvious defects should not have been detected by the Supplier.

### **Section 12. Statute of limitations**

The limitation period for all the Buyer's claims - for whatever legal reasons - shall be 6 months, if the Buyer is a legal entity within the meaning of Section 310 (1) of the German Civil Code, otherwise 12 months. Otherwise the statutory time limits shall apply. This applies in particular to wilful or fraudulent conduct and in the case of claims in accordance with the Product Liability Law.

### **Section 13. Intra-group settlement clause**

The Supplier shall be entitled to offset with and against accounts receivable, whether due or not or even those due in the future, to which Masterflex AG - or a company in which it holds an interest of at least 50%, either directly or indirectly - shall be entitled against the Buyer or which the Buyer has against one of the designated companies (the Buyer shall obtain information about the group of companies at any time on request).

### **Section 14. Technical details and indications for the use of our products**

(1) The Buyer shall be obliged to only use the Supplier's products based on the technical data quoted by the Supplier.

(2) Different types of tube were primarily designed as vacuum suction tubes and therefore adequate fan capacity should be strictly complied with. If there is no field experience with the products, the Supplier strongly recommends prior trials or consultation with the technicians. This shall apply in particular in the case of operating conditions with two-way stresses (movements), high temperatures, vibrations, abrasion or chemical attack. In addition, with regard to the appropriate use of the products, the Supplier also refers to the "Technical Appendix" of the comprehensive catalogue, which is available on request.

### **Section 15. Concluding provisions**

(1) The law of the Federal Republic of Germany shall apply to these "General Terms and Conditions of Delivery" and all legal relationships between the parties to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

(2) The place of performance and the exclusive place of jurisdiction for all disputes arising from these "General Terms and Conditions of Delivery" shall be the Supplier's place of business, unless otherwise stipulated in the order confirmation.

(3) Should individual provisions of these "General Terms and Conditions of Delivery" be or become inoperative or impracticable in whole or in part, or contain a loophole, the remaining provisions shall be unaffected thereby. The parties shall undertake to agree a legally permissible provision in place of the inoperative or impracticable provision which comes closest to the economic and legal purpose of the inoperative or impracticable provision, or which closes the loophole.