

**I. General – Scope**

The performance of all our deliveries and services is exclusively governed by the following General Terms and Conditions of Sale. These apply solely to merchants and enterprises pursuant to Article 14 BGB [*German Civil Code*]. They also apply in particular, if we perform deliveries or services without reservation for the ordering party, being aware that the General Terms of Conditions of the ordering party contradict or deviate from our own General Terms and Conditions of Sale. The scope of these General Terms and Conditions of Sale covers all delivery countries; applicability of German Law is hereby deemed as agreed.

**II. Offers and Contract Conclusion, Content of Performance**

- Our offers are subject to change without notice. The order is deemed to be a binding offer. The order will be usually accepted within four weeks by the submission of an order confirmation or by the unreserved performance of the ordered deliveries.
- The technical data and descriptions within the respective product information or promotional material do not constitute any warranty of quality or durability of the goods to be delivered by us. However, such information has to be observed for processing.
- In case of sales according to specimen or sample these merely describe that the product appropriately corresponds to these specimens or samples, but do not constitute any warranty for the goods to be delivered by us.
- Any additional agreements to the purchase contract, in particular oral arrangements, information, recommendations, advice and other agreements with our employees are only binding for us after having been confirmed by letter or standard form; they do not constitute a consulting contract, unless such a contract has been expressly agreed in writing.

**III. Prices, Payment Terms, Default of Payment**

- The prices agreed on conclusion of the respective contract apply, in particular the prices as stated in the order confirmation and/or the prices according to our current price list. The above prices are stated excluding VAT, in the amount as legally valid on the day of delivery, and the costs for a proper shipping, the transport costs ex works or ex our warehouse, the cartage costs and - if agreed - the costs for the transport insurance. In case of international deliveries country specific charges may apply.
- We reserve the right to adjust our prices appropriately; price increases due to increases of the raw material costs are reserved at any time.
- Our invoices are payable net within 30 days. After expiry of the due date as stated on the invoice, the ordering party is in arrears without further reminder.
- The ordering party is only entitled to set-off or retention rights, if its counterclaims have been determined in a legally binding manner or have been recognized in writing. In addition, a right of retention is only given, if the counterclaim asserted is based on the same contractual relationship as our claim.
- If the ordering party does not pay due invoices, exceeds a due date for payments or if the financial circumstances of the ordering party deteriorate, we are entitled to accelerate the remaining debt of the ordering party and, in deviation from the agreements made, to request prepayments or securities or, after delivery, request the immediate payment of all our claims arising from the same legal relationship.

**IV. Delivery and Performance Period, Default in Performance**

- Agreed delivery times are deemed as approximate dates only, unless a sale to be performed at a fixed point in time has been expressly agreed in writing. If delivery periods are exceeded due to circumstances within our sphere of responsibility, the ordering party is entitled to withdraw from the contract in writing after an appropriate period of grace set by the ordering party has elapsed unsuccessfully.
- We are in default only after expiry of the appropriate period of grace set by the ordering party. In case of force majeure or other unforeseeable circumstances outside our sphere of responsibility, as e.g. operational breakdowns, outage of production plants, transgressions of deadlines or delivery failures by our suppliers and business interruptions due to lack of raw materials, energy or labor force, strike, lock-outs, difficulties in sourcing means of transport, traffic disturbances, interferences of the authorities, we are entitled to delay the delivery and/or performance for the duration of the impediment plus an appropriate lead time. If the delivery and/or performance is delayed due to the above causes by more than one month, we and also the ordering party are entitled to withdraw in writing from the contract excluding any claims for damages, subject to the requirements of Item VIII of the present Terms and Conditions of Sale in regard to the volumes affected by the disruption of delivery.
- Our liability for damages is limited in any case of default according to the provisions to Item VIII.
- We are entitled to perform reasonable partial deliveries and to partial performances within the agreed periods of delivery.
- We reserve the right of defense of non-performance of the contract.

**V. Transfer of Risk, Shipping and Packaging Costs**

- The delivery is performed ex works or ex warehouse, unless otherwise expressly

agreed in writing, and the goods have to be picked up by the ordering party at its own risk and costs. In this case the risk of an accidental loss and an accidental deterioration after provision for pick-up of the goods is transferred to the ordering party after receipt of the notification of provision. As for the rest, the risk of an accidental loss or an accidental deterioration of the delivery objects is transferred to the ordering party on hand-over to the carrier.

- Returnable containers and returnable packaging have to be returned within 60 days emptied of residue and carriage paid by the ordering party; loss and damage of the returnable containers and returnable packaging are at the expense of the ordering party. Returnable packaging (containers) must not be used for other purposes or the storage of other products. They are exclusively designated for the transport of our delivered goods. Letterings must not be deleted. We will not accept the return of disposable packaging. Instead, we will refer the ordering party to a third party, who will accept the packaging pursuant to the German Packaging Ordinance.

**VI. Obligations of the Ordering Party/Reservation of Title**

- The goods delivered remain our property until full payment of the purchase price and any open invoices. The reservation of title is not affected by the inclusion of a purchase price claim against the ordering party into a current invoice and the recognition of a balance.
- The ordering party is obliged to treat the purchased property with care and, in particular, to insure this property against loss, damage and destruction at replacement value at its own expenses. The ordering party hereby assigns its claims from insurance policies to us. We accept the assignment.
- The ordering party is not allowed to either pledge the goods still owned by us or transfer them by way of security. However, the ordering party has the right to sell and to process the goods delivered within a proper business transaction. This entitlement is not given, as far as the ordering party has assigned or pledged the claim arising from the sale and/or processing of the goods to a third party or has agreed a non-assignment clause with such party.
- To secure the fulfillment of all our claims arising from the legal relationship with the ordering party, the ordering party hereby assigns any claims – also future and conditional claims - from a sale or processing of the goods delivered by us including any ancillary rights in the amount of 110% gross of the value of the delivered goods ranking prior to the remaining part of its claim. We hereby accept this assignment and are entitled to disclose such assignment at any time.
- As long and as far as the ordering party complies with its payment obligations, the ordering party is entitled to collect its claims against its customer assigned to us. In these cases, the ordering party is committed to forward the amounts collected from assignments to us or, should this not be possible, to hold them in custody on a trust basis and separately. This right to collect becomes void, if the ordering party is in default with more than 25% of all of its payment obligations to us.
- On our request, the ordering party must disclose such assignment to its debtors requesting its debtors to render the payments up to the amount of our claim against the ordering party to us. We are entitled to inform the debtors of the ordering party about the assignment at any time and to collect our claims. We will not use this right as long as the ordering party fulfills its payment obligations to us without default. In case of a payment default of the ordering party, the ordering party must disclose the assigned claims and their debtors to us on request, give any information required and submit any necessary documentation for the collection of the claims.
- In case of attachments or other interventions of third parties, the ordering party must inform us immediately in writing.
- The conditioning and processing or transformation of the goods delivered by us subject to reservation of title is always performed for us, without any liabilities on our part. If the goods delivered by us subject to reservation of ownership are processed, mixed with or linked to other objects we do not own, we acquire a co-ownership in the new object in proportion to the value of the goods delivered by us to the other objects. The ordering party will hold such sole ownership or co-ownership in custody for us. The ordering party hereby assigns to us for security purposes its claims from the sale of such new products, in which we are entitled to ownership rights, to the extent of our share in the ownership rights in the sold property. If the ordering party links or mixes the delivered goods with a principal object, the ordering party hereby assigns to us its claims against the third party up to the amount of the value of our goods. We hereby accept the assignment.
- We undertake to release the securities due to us on request of the ordering party, as selected by us, as far as the realizable value of our securities exceeds our claims to be secured against the ordering party by more than 20%.
- If the ordering party is in breach of contract, in particular in case of a payment default exceeding 10% of the invoice amount for more than 14 days as well as in case of a petition to open insolvency proceedings we are entitled - without prejudice to any other claims (for damages) - to withdraw from the contract and to request the return of the goods delivered by us. In this case, the request for return also includes the statement of withdrawal.

**VII. Rights of the Ordering Party in Case of Defects**

- The ordering party must notify us in writing about obvious defects in quality, wrong deliveries and volume deviations immediately, however, at the latest within 7 days after receipt of the goods by the ordering party, otherwise the



goods are deemed as approved. We must be notified in writing about any hidden defects within a period of time of eight days after their discovery. The buyer is obliged to check by a sample processing, if required, if the delivered goods are free of defects and appropriate for their intended use. This applies also, if the goods are mixed with components which are not delivered by us. If during the first processing possible defects are detected, the works have to be stopped immediately and the not yet processed, unopened original units have to be safeguarded. They have to be submitted to us on request for inspection. After three months after transfer of risk to the ordering party pursuant to Item V. 1 notices of defects regarding hidden defects are excluded and are deemed as delayed as far as they would have been reasonably identifiable. In case of a delayed notice of defects, the ordering party forfeits its rights in case of defects subject to the requirements to Item VIII, unless the defect has been fraudulently concealed by us.

2. In case of defects of the goods delivered by us, we are obliged only to rectify the defects or to deliver goods free of defects (supplementary performance) at our own discretion, unless we are guilty of intent or gross negligence. If we are not willing or not able to provide a supplementary performance, in particular if such performance is delayed for more than an appropriate period of time due to reasons within our sphere of responsibility, or if the supplementary performance fails otherwise, the ordering party is entitled to withdraw from the contract or to request a deduction from the purchase price at its own discretion. A rectification of defects is deemed as failed after the third effort.

#### VIII. Rights and Obligations of our Enterprise

1. Our enterprise is only liable for damages or futile efforts, regardless of the legal cause, if the damage or the failed efforts:
  - a) have been caused by us or one of our vicarious agents by a culpable infringement of a material contractual duty; or
  - b) is due to a grossly negligent or intentional infringement of a duty by us or one of our vicarious agents.

According to Item VIII. 1 a) and b) we only assume any liability for damages or futile efforts, unless caused by a consultancy or information subject to separate fees, in case of an intentional or grossly negligent violation of duty, as far as this violation of duty does not constitute a defect in quality pursuant to Article 434 BGB of the goods delivered by us.
2. We are liable for the infringement of a material contractual duty according to Item VIII. 1 a). Our liability for damages is hereby limited to the foreseeable, typically occurring damage, unless in cases of gross negligence or intent. In this case we are in particular not liable for lost profits of the ordering party and unforeseeable subsequent damages. The above liability limitation according to Sentence 1 and 2 above applies equally to damages, which are caused by gross negligence or intent of our employees or agents. We are not liable for indirect damages of the ordering party which are caused due to the assertion of contractual penalty claims of third parties.
3. If we are liable according to Item VIII. 1 b) for the infringement of a material contractual duty, our liability is limited to the amount covered by a corresponding insurance, unless in case of gross negligence or intent.
4. The limitations of liability stated to Item VIII. 1 to 3 do not apply, as far as our liability is mandatory due to the provisions of the German Product Liability Act or in case of claims against us due to personal injuries including death or the impairment of health. If the goods delivered by us lack a warranted property, we are only liable for such damages, the absence of which was the object of the warranty.
5. A liability for damages exceeding the provisions of Items VIII. 1 to 4 is hereby excluded. This applies in particular to claims for damages due to culpa in contrahendo pursuant to Article 311 Para. 3 BGB, a positive violation of a contractual duty pursuant to Article 280 BGB or claims pursuant to Article 823 BGB.
6. As far as this liability for damages is excluded or limited according to Item VIII. 1 to 5, this also applies in regard to the personal liability for damages of our salaried employees, workers, staff members, agents and vicarious agents.

#### IX. Limitation Period for Claims

1. Claims of the ordering party due to defects or services performed in breach of duty - including claims for damages and claims for indemnification of futile efforts - are subject to a limitation period of one year starting on the statutory commencement of the limitation period, unless otherwise stated to the following Items IX. 1 to 5.
2. If the ordering party is an entrepreneur and if the ordering party or another buyer within the supply chain as entrepreneur has satisfied claims of the consumer due to defects of goods newly produced and delivered by us, which also have been delivered to the consumer as newly produced goods, the limitation period for claims of the ordering party against us starts according to Articles 437 and 478 Para. 2 BGB at the earliest two months after the date, at which the ordering party or the other buyer within the supply chain as entrepreneur satisfied the claims of the consumer, unless the ordering party was able to successfully plead the statute of limitations against its customer/contracting party. Claims of the ordering party against us due to defective goods delivered by us become statute-barred in any case if the claims of the customer/contracting party of the ordering party due to defects of the goods delivered by us to the ordering party against the ordering party are statute-barred; however, in case of construction materials 5 years after the date

at which we delivered the respective goods to our ordering party at the latest, in case of other materials 1 year after this date.

3. In case of newly produced goods delivered by us which have been used for a building according to their usual purpose and which caused its defectiveness, the claims of the ordering party become statute-barred within five years after the statutory commencement of the limitation period. In deviation of Sentence 1 a limitation period of four years with regard to construction work and two years with regard to other works, whose outcome consists in the production, maintenance and alteration of a thing, applies, if the ordering party used the goods delivered by us for the fulfillment of contracts, which have been included into Part B of the German Contracting Rules for Award of Public Works Contracts on the whole. The limitation according to the above sentence 2 occurs at the earliest two months after the date, at which the ordering party has satisfied the claims of its contracting party due to the defectiveness of the building, which has been caused by the goods delivered by us, unless the ordering party was able to successfully plead the statute of limitation against its customer/contracting party. Claims of the ordering party against us due to defective goods delivered by us become statute-barred in any case as soon as the claims of the customer/contracting party of the ordering party against the ordering party due to defects of the goods delivered by us to the ordering party are statute-barred; however, 5 years after the date at which we delivered the respective goods to our ordering party at the latest.
4. If we provided a consultancy and/or information, not subject to a separate fee, in breach of duty, without having delivered goods in connection with such information or consultancy or if the consultancy or information in breach of duty does not constitute a defect in quality pursuant to Article 434 BGB of the goods delivered by us, the claims against us based on the above are statute-barred within one year after statutory commencement of the limitation period. Claims of the ordering party/customer against us based on the violation of contractual, pre-contractual or statutory duties, which do not constitute a defect in quality pursuant to Article 434 BGB of the goods which are to be delivered or have been delivered by us, also become statute-barred within one year after statutory commencement of the limitation period. If the above breaches of duty constitute a defect in quality pursuant to Article 434 BGB of the goods delivered by us in connection with the consultancy or information provided, the regulations to Items 1 to 3 and 5 apply to the limitation of the respective claims.
5. The provisions to Items 1 to 4 do not apply to the limitation of claims due to personal injuries including death or the impairment of health or to the limitation of claims pursuant to the German Product Liability Act and due to defects of title of the goods delivered by us, nor to the limitation of claims of our ordering party/customer, which are based on the fact that we fraudulently concealed defects of the goods delivered by us or that we intentionally or grossly negligently breached a duty. For the cases stated to this Item IX. 5 the statutory limitation periods apply to the limitation of these claims.

#### X. Return Policy

We hereby exclude the return of faultless goods delivered by us.

#### XI. Nonassignability

Rights or claims against us, in particular due to defects of goods delivered by us or due to a breach of duty committed by us must not be assigned or pledged to third parties, neither on the whole nor in part, Article 354 HGB [*German Commercial Code*] remains unaffected.

#### XII. Place of Performance, Jurisdiction, Applicable Law, Trade Terms

1. Place of performance and exclusive jurisdiction for any claims between us and merchants or public law entities or public law special funds is the registered office of the enterprise, unless otherwise prescribed by mandatory statutory regulations.
2. Solely the laws of the Federal Republic of Germany govern the legal relationship between us and the ordering party. The application of the regulations for the International Sale of Goods and of the German international private law is expressly excluded.
3. As far as trade terms according to the International Commercial Terms (INCOTERMS) have been agreed, the INCOTERMS as amended from time to time apply.

#### XIII. Final Provisions

1. Should any individual provision of the above provisions be invalid, partially invalid or excluded by a special agreement, the validity of the other provisions remains unaffected.
2. We store the data of our ordering parties within the scope of our mutual business relationship pursuant to the German Federal Data Protection Law.
3. Our delivery address is: Sika Deutschland GmbH, Zentrallager, Motorstrasse 10 a, 70499 Stuttgart-Weilimdorf

**Registered Office of the Enterprise: Sika Deutschland GmbH, Komwestheimer Str.103-107, 70439 Stuttgart, Managing Director: Joachim Straub, Registration Court: Amtsgericht [Local Court] Stuttgart HRB [Commercial Register] 23319, VAT No.: DE 813561973**