

**General Terms and Conditions of Sale and Delivery**  
**of Actiforce Europe GmbH, Kräher Weg 11, 31582 Nienburg**

**Section 1**

**General - Scope of application**

- (1) Our General Terms and Conditions of Sale and Delivery apply exclusively; we do not recognise conflicting provisions issued by the customer or those that deviate from our General Terms and Conditions of Sale and Delivery unless we have expressly agreed in writing that they shall be valid. Our General Terms and Conditions of Sale and Delivery shall also apply in the event that we effect delivery to the customer without reservations even though we are aware of conflicting provisions or provisions which deviate from our General Terms and Conditions of Sale and Delivery issued by the customer.
- (2) All agreements that have been concluded between us and the customer for the purpose of executing this Agreement are set down in writing in this Agreement.
- (3) Our General Terms and Conditions of Sale and Delivery shall only apply with regard to companies within the meaning of Article 310 paragraph 1 of the German Civil Code [*Bundesgesetzbuch*].
- (4) The sales packaging filled with the goods, which is typically received by the private end user, shall initially be brought onto the market by the customer in accordance with Article 6 paragraph 1 of the German Packaging Ordinance [*Verpackungsordnung*]. In order to guarantee country-wide collection of the sales packaging, the customer shall undertake to participate in one or more of the dual systems detailed in Article 6 paragraph 3 of the German Packaging Ordinance.

**Section 2**

**Acceptance of tender**

- (1) In the event that the order is to qualify as a tender in accordance with Article 145 of the German Civil Code, we can accept this within 2 weeks.
- (2) We reserve proprietary rights and copyright to diagrams, illustrations, calculations and other documents. This shall also apply to written documents that are labelled as “confidential”. The customer must obtain our express written consent before passing these on to third parties.

**Section 3**

**Product description/guaranteed property**

Properties of samples/test models shall only be binding following express written agreement. Insofar as the composition of the product is not guaranteed separately, the product delivered shall be of average type and quality.

**Section 4**

**Prices - Payment conditions**

- (1) Unless stipulated otherwise in the order confirmation, our prices shall be “ex works”, excluding packaging; the packaging shall be invoiced separately.
- (2) Statutory value added tax is not included in our prices; it shall be indicated separately in the invoice, at the statutory rate applicable as at the invoice date.

- (3) The deduction of discounts shall require special written agreement.
- (4) Unless stipulated otherwise in the order confirmation, the net purchase price (without deduction) shall be due immediately from the date of invoice. The statutory regulations pertaining to the consequences of late payment shall apply.
- (5) The customer shall only hold rights to set-off in the event that its counter claims have been legally determined, are undisputed or are recognised by us. Moreover, the customer shall be entitled to exercise a right of retention insofar as its counter claim is based on the same contractual relationship.

## **Section 5**

### **Modification of prices/collateral**

- (1) We reserve the right to modify our prices correspondingly in the event that, following conclusion of the Agreement, cost reductions or cost increases occur, including as a result of changes in the market price, public levies and/or other components making up the price. We will provide evidence of these changes to the customer upon request.
- (2) All modifications to the agreement concerning the order, particularly those which were caused by the fact that the information provided does not correspond to the actual implementation possible, must be compensated as additional costs, in the event that additional costs do in fact result from these.

## **Section 6**

### **Delivery period**

- (1) All technical issues must have been clarified prior to commencement of the delivery period stated by us.
- (2) A precondition for compliance with our delivery obligation is that the customer's obligation is fulfilled correctly and in good time. We reserve the right to plead non-fulfilment of the Agreement.
- (3) In the event that the customer is late in accepting the delivery, or in the event that it culpably breaches other duties of collaboration, we shall be entitled to request compensation for the loss or damage we incur as a result of this, including any additional expenses. We reserve the right to assert other claims.
- (4) Insofar as the preconditions of paragraph (3) are met, the risk of accidental destruction or accidental deterioration of the purchased item shall be transferred to the customer at the point when the latter falls behind with acceptance or payment.
- (5) We shall be liable in accordance with the statutory provisions, insofar as the purchase agreement is a transaction where time is of the essence within the meaning of Article 286 paragraph 2 no. 4 of the German Civil Code or Article 376 of the German Commercial Code. We shall also be liable in accordance with the statutory provisions insofar as, as the result of a delay in delivery for which we are responsible, the customer is entitled to claim that its interest in further fulfilment of the Agreement has ceased.
- (6) Furthermore, we shall be liable in accordance with the statutory provisions insofar as the delay in delivery is the result of an intentional or grossly negligent breach of contract on our part; any fault on the part of our representatives or vicarious agents shall be imputed to us. Insofar as the delay in delivery is the result of an intentional breach of contract for which we are not responsible, our liability for compensation shall be limited to the foreseeable loss or damage that might typically occur.
- (7) We shall also be liable in accordance with the statutory provisions insofar as the delay in delivery for which we are responsible is the result of the culpable breach of a significant contractual obligation; in this case however, the liability for compensation shall be limited to the foreseeable loss or damage that might typically occur.

- (8) Moreover, in the event of a delay in delivery, we shall be liable for every full week of delay within the context of a flat-rate compensation for delay amounting to 0.3% of the delivery value, to a maximum of 1.5% of the delivery value.
- (9) This shall not affect the customer's other legal claims and rights.

## **Section 7**

### ***Force majeure* and other impediments to performance**

As a result of incidences of *force majeure*, the delivery and acceptance obligations shall be suspended for the period that the *force majeure* has an impact. The same shall apply for all unforeseen disruptions, obstructions and difficulties for which we are not responsible, such as shortage of raw materials, operational disruptions, labour disputes/strikes, government measures, loss of the sources of delivery or supply, breach of duties of cooperation on the part of the customer, etc. In such cases, we shall be entitled to deliver with a corresponding delay, including an appropriate start-up time.

## **Section 8**

### **Transfer of risk - Packaging costs**

- (1) Unless stated otherwise in the order confirmation, delivery "ex works" has been agreed.
- (2) Separate agreements are in force for the collection of packaging.
- (3) Insofar as the customer requests it, we shall take out transport insurance to cover the delivery; the customer shall be liable for the costs incurred in this regard.

## **Section 9**

### **Liability for defects**

- (1) Deviations and fluctuations in the composition and appearance of the goods that are accepted in the trade and are technically unavoidable shall not entitle the customer to issue a notice of defects.
- (2) Warranty claims held by the purchaser presume that the purchaser has duly fulfilled its duties of inspection and objection under Article 377 of the German Commercial Code.
- (3) Insofar as the item contains a defect, the purchaser shall be entitled to supplementary performance in the form of rectification of the defect or to delivery of a new item free of defects, as it wishes. In the event of rectification of the defect, we undertake to bear all the expenses necessary to rectify the defect, particularly the costs of transport, travel, labour and materials, insofar as these are not increased by the fact that the purchased item has been moved to a location other than the place of performance.
- (4) In the event that the supplementary performance is unsuccessful, the customer shall be entitled to request rescission or reduction, as it wishes.
- (5) We shall be liable in accordance with the statutory provisions insofar as the customer asserts claims for compensation that are based on an intentional act or gross negligence, including an intentional act or gross negligence on the part of our representatives or vicarious agents. Insofar as we are not accused of any intentional breach of contract, the liability for compensation shall be limited to the foreseeable loss or damage that might typically occur.
- (6) We shall be liable in accordance with the statutory provisions insofar as we culpably breach a significant contractual obligation; in this case, however, the liability for compensation shall be limited to the foreseeable loss or damage that might typically occur.

- (7) Insofar as the customer holds a claim to compensation for the loss or damage in lieu of performance, our liability shall also be limited to compensation for the foreseeable loss or damage that might typically incur, within the context of paragraph (4). We shall not accept any liability for defects that have arisen as a result of unsuitable or improper use, incorrect or negligent handling, failure to comply with the assembly, operating or maintenance instructions or improper modifications or repair work.
- (8) In particular, the seller wishes to note that the provisions of the German Act on Trademarks, Patents and Design Patents [*Marken-, Patent- und Geschmacksmustergesetz*] and other industrial property rights held by third parties must be observed. The customer shall undertake to ensure that, in the case of customisations, particularly those which are produced or assembled on the basis of samples, models, drawings, etc. provided by the customer, it and its purchaser comply with all statutory provisions and, in particular, that no infringements of the German Act on Trademarks, Patents and Design Patents take place. The customer shall undertake to indemnify us in respect of all infringements of trademarks, patents and design patents caused by acts or omissions on its part or on the part of its purchasers, and from other infringements of industrial property rights held by third parties.
- (9) This shall not affect the liability for loss of life or injury to body or health caused by culpable acts; this shall also apply to mandatory liability in accordance with the German Product Liability Act [*Produkthaftungsgesetz*].
- (10) Unless stated otherwise above, liability shall be excluded.
- (11) The statutory period of limitation for warranty claims shall be 12 months, calculated from the transfer of risk.
- (12) The statutory period of limitation in the event of a delivery recourse in accordance with Articles 478, 479 of the German Civil Code shall be unaffected; this shall be five years, calculated from delivery of the defective item.

## **Section 10**

### **Joint and several liability**

- (1) Further liability for compensation than is provided for in Article 9 shall be excluded, notwithstanding the legal nature of the claim asserted. This applies particularly to claims for compensation arising from culpable acts when the Agreement was concluded, due to other breaches of obligations or due to tort claims for compensation for material damage in accordance with Article 823 of the German Civil Code.
- (2) The limitation pursuant to paragraph (1) shall also apply insofar as the customer requests compensation for expenses paid out in vain instead of performance, in lieu of making a claim for compensation for damage.
- (3) Insofar as our liability for compensation is excluded or restricted, this shall also apply with regard to personal liability for compensation on the part of our staff, employees, workers, representatives and vicarious agents.

## **Section 11**

### **Guarantee of retention of title**

- (1) We shall reserve ownership of the purchased item until such time as all payments from the delivery agreement have been received. In the event that the customer breaches the terms of the Agreement, particularly in the event of a payment delay, we shall be entitled to take back the purchased item. In the event that we take back the purchased item, this shall constitute withdrawal from the Agreement. After taking back the purchased item, we shall be entitled to sell it; the proceeds of sale shall be deducted from the customer's liabilities – minus appropriate sales costs.

- (2) The customer undertakes to treat the purchased item with care; in particular, it undertakes to insure the item against fire and water damage and theft at its own expense, with the insured sum being adequate to cover the replacement value. Insofar as maintenance and inspection tasks are necessary, the customer must carry these out in good time, at its own expense.
- (3) In the event of levies of execution or other third-party interventions, the customer must immediately notify us in writing, in order that we may take legal action in accordance with Article 771 of the German Code of Civil Procedure [*Zivilprozeßordnung*]. Insofar as the third party is not able to refund us the court costs and other costs of legal action in accordance with Article 771 of the Code of Civil Procedure, the customer shall be liable for the resulting shortfall.
- (4) The customer shall be entitled to resell the purchased item in the proper course of business; however, it hereby assigns all claims in the amount of the final invoice amount (including VAT), to which it becomes entitled against its purchasers or third parties as a result of the re-sale, to our claim, irrespective of whether the purchased item has been sold on following processing. The customer shall remain entitled to collect this claim even after assignment. This shall not affect our right to collect the claim ourselves. However, we undertake not to collect the claim as long as the customer complies with its payment obligations from the proceeds obtained, does not fall behind on payments and, in particular, as long as no application is made to open composition or insolvency proceedings and no default occurs. However, if this is the case, we may request that the customer discloses the assigned claims and their debtors to us, provides all the information required for collection, hands over the accompanying documents and notifies the debtors (third parties) of the assignment.
- (5) In the event that the customer carries out processing or alteration of the purchased item, this shall always take place on our behalf. In the event that the purchased item is processed with other items that do not belong to us, we shall acquire co-ownership of the new item at the ratio of the value of the purchased item (final invoice amount, including VAT) to the other processed items at the time of processing. Moreover, for items created by processing, the same provisions shall apply as for the purchased item delivered subject to reservations.
- (6) In the event that the purchased item is mixed with other items that do not belong to us such that the items are rendered inseparable, we shall acquire co-ownership of the new item at the ratio of the value of the purchased item (final invoice amount, including VAT) to the other mixed items at the time of mixing. If mixing takes place such that the customer's item can be deemed the main item, it shall hereby be agreed that the customer shall transfer proportionate co-ownership to us. The customer shall keep the sole ownership or co-ownership created in this manner safe for us.
- (7) At the request of the customer, we undertake to release the securities to which we are entitled insofar as the realisable value of our securities exceeds the claims to be secured by more than 10%; we shall be responsible for selecting which securities to release.

## **Section 12**

### **Jurisdiction - Place of performance**

- (1) Insofar as the customer is a businessman, our registered offices shall be the place of jurisdiction; however, we shall also be entitled to bring actions against the customer at the court in its place of domicile.
- (2) The laws of the Federal Republic of Germany shall be applicable; the United Nations Convention on the International Sale of Goods shall be excluded.
- (3) Unless stated otherwise in the order confirmation, the place of performance shall be our registered offices.