

***CLOUTH GROUP***



**General Terms of Sale**

## **General Terms of Sale of Clouth Group companies (including Joh. Clouth GmbH and Clouth Sprenger GmbH)**

### **§ 1 Abstract, scope of application**

(1) These General Terms of Sale apply for all our business relationships with our customers (hereinafter referred to as "Purchaser"). The General Terms of Sale only apply if the Purchaser is a business person (§ 14 BGB (German Civil Code)), a legal entity pursuant to public law or a fund under public law.

(2) The General Terms of Sale particularly apply for agreements regarding the sale and/or delivery of movable objects (hereinafter also referred to as "Goods") regardless of whether we manufacture the Goods ourselves or purchase them from suppliers (§§ 433, 651 BGB (German Civil Code)). The General Terms of Sale apply in their respective version as general agreements also for future agreements regarding the sale and/or supply of movable objects with the same Purchaser without the necessity of having to refer to them in each individual case; we shall inform the Purchaser immediately in case of changes to our General Terms of Sale.

(3) Our General Terms of Sale apply exclusively. Deviating, opposing or supplemental general conditions of the Purchaser become a component of the agreement only and to the extent as we have explicitly agreed to their validity. This requirement for consent applies in any case, for example also if we have executed the delivery to the Purchaser without reservation being aware of the Purchaser's general terms and conditions.

(4) Individual agreements with the Purchaser concluded in isolated cases (including subsidiary agreements, supplements or changes) outrank these General Terms of Sale in any event. A written contract or our written confirmation is decisive for the content of such agreements.

(5) Legally relevant declarations and notifications to be issued to us by the Purchaser after the formation of a contract (e.g. deadlines, notices of defect, declarations of withdrawal or reductions) require the written form to be effective.

(6) References to the application of legal regulations only have a clarifying significance. Therefore the legal regulations apply also without such clarification, unless they are directly altered in these General Terms of Sale or have been explicitly excluded.

### **§ 2 Conclusion of contract**

(1) Our offers are subject to change and are non-binding. This also applies if we have provided the Purchaser with catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documentation - also in electronic form - to which we retain proprietary rights and copyrights.

(2) The ordering of the Goods by the Purchaser constitutes a binding offer of contract. Unless specified differently in the order we are entitled to accept this offer of contract within 2 weeks from receipt by us.

### **§ 3 Terms of delivery and default of delivery**

(1) The delivery period shall be agreed upon individually and/or specified by us at the acceptance of the order.

(2) If we are not able to comply with binding delivery deadlines for reasons which are not our responsibility (unavailability of service), we shall notify the Purchaser without undue delay and simultaneously inform him of the anticipated new delivery date. If the service is not available also within the new delivery period, we are entitled to partially or completely withdraw from the agreement; we shall refund any considerations provided by the Purchaser without undue delay. Cases of unavailability of the service in this context particularly include the late self-supply through our supplier, if we have concluded a congruent hedging transaction, if neither we nor our supplier are responsible or if we are not responsible for the procurement in individual cases.

(3) The commencement of our delay in delivery is determined by the statutory regulations. However, a warning from the Purchaser is required in any event. If we are in default of delivery, the Purchaser may demand a compensation for his damage caused by our default in accordance with the statutory provisions of Sec. 280, 286 BGB (German Civil Code).

(4) The Purchaser's rights according to § 8 of these General Terms of Sale and our legal rights, particularly in case of the exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of the performance and/or subsequent fulfilment) remain unaffected.

#### **§ 4 Delivery, transfer of risk, acceptance, default of acceptance**

(1) The delivery occurs ex works, which is also the place of fulfilment. At the request and expense of the Purchaser, the Goods are sent to a different place of destination (dispatch sale). Unless otherwise agreed, we are entitled to determine the type of dispatch (particularly transport companies, transport route, packaging).

(2) The risk of accidental destruction and accidental deterioration of the Goods is transferred to the Purchaser upon handover to the Purchaser at the latest. However, in case of dispatch sale, the risk of accidental destruction and accidental deterioration of the Goods as well as the risk of delay is transferred to the forwarding agent, the carrier or other persons or institutions commissioned with the execution of the dispatch at the time of supply of the Goods. If acceptance has been agreed upon, it is decisive for the transfer of risk. Also for the remainder, the statutory regulations of the law on contracts for work and services apply accordingly for agreed acceptance. The handover and/or acceptance also apply if the Purchaser is in default of acceptance.

(3) If the Purchaser is in default of acceptance, omits an act of cooperation or if our delivery is delayed for other reasons owed to the Purchaser, we are entitled to demand compensation for the resulting damage including additional expenses (e.g. storage costs). In this case we calculate flat rate compensation in the amount of 0.5% of the net price per calendar week, commencing with the delivery deadline and/or – for the lack of a delivery deadline - with the notification of readiness for dispatch of the Goods, maximally up to 10% in the event of the ultimate non-acceptance. The verification of a greater damage and our legal claims (particularly compensation of additional expenses, appropriate compensation, termination) remains unaffected; however, the flat-rate has to be credited toward further monetary claims. The Purchaser is entitled to prove that we incurred no damage at all or a significantly lesser damage than the flat-rate stipulated above.

## **§ 5 Prices and payment conditions**

(1) Unless otherwise agreed in individual cases, our prices respectively current at the time of formation of an agreement apply, namely ex storage plus legal VAT.

(2) In case of dispatch sale (§ 4 (1)), the Purchaser is responsible for the transport costs ex storage and the costs of transport insurance, if requested by the Purchaser. Any customs fees, levies, taxes and other public dues are borne by the Purchaser. We do not take back transport- and all other packaging material according to the stipulations of the Packaging Ordinance; they become the property of the Purchaser; exchangeable reusable pallets are exempted from this.

(3) The purchase price is due and payable within 30 days from date of invoice and delivery and/or acceptance of the Goods. However, in case of agreements with a delivery value of more than 50,000.00 EUR we are entitled to demand a deposit in the amount of 30 % of the purchase price. The deposit is due and payable within 14 days from date of invoice.

(4) The Purchase is in default upon the expiration of the above mentioned payment deadline. The purchase price shall incur interest in the amount of the respectively applicable legal default interest for the duration of the default. We reserve the right to assert further damage caused by default. Toward merchants, our claim to the commercial default interest (§ 353 HGB (German Commercial Code)) remains unaffected.

(5) The Purchaser is only entitled to offsetting or right of retention if his claim is final and absolute or uncontested. The counter claims of the Purchaser, particularly according to § 7 (6) sentence 2 of these General Terms of Sale, remain unaffected in case of defects of the delivery.

(6) If it becomes evident after the conclusion of the agreement that our claim to the purchase price is jeopardised due to the Purchaser's lack of performance (e.g. due to measures of judgement enforcement, application to commence insolvency proceedings), we are entitled to refuse performance according to the statutory regulations and - after giving a deadline, if necessary - withdraw from the agreement (§321 BGB (German Civil Code)). In case of agreements pertaining to the production of unreasonable objects (e.g. one-off productions) we are entitled to declare the withdrawal immediately; the legal regulations regarding the expensibility of the a deadline remain unaffected.

## **§ 6 Reservation of title**

(1) We reserve ownership to the sold Goods up to the complete payment of all our current and future claims from the purchase agreement and an ongoing business relationship (secured claims).

(2) The Goods under reservation of title may not be mortgaged or pledged as security to third parties until complete payment of the secured claim. The Purchaser is obligated to notify us of any access to our Goods by third parties in writing without undue delay.

(3) In case of conduct contrary to the agreement by the Purchaser, particularly in case of non-payment of the due purchase price, we are entitled to withdraw from the agreement according to the statutory regulations and demand the return of the Goods based on reservation of title and the withdrawal. If the Purchaser fails to pay the due purchase price, we are only permitted to assert these rights if we

unsuccessfully provided the Purchaser with a suitable deadline for payment or if such a deadline is expendable based on statutory regulations.

(4) The Purchaser is authorised to onsell and/or process the Goods under reservation of title in the course of regular business. In this case, the following conditions apply.

(a) The reservation of title includes products created based on the processing, intermingling or combination of our Goods at their full value, whereby we are considered the manufacturer. If a third party proprietorship remains valid during the processing, intermingling or combination with third party goods, we acquire coownership at the ratio of the invoice values of the processed, intermingled or combined Goods. For the remainder, the same conditions apply for the created product as in case of merchandise delivered under reservation.

(b) The Purchaser hereby assigns any claims generated from the on-selling of the Goods or products against third parties to us in total and/or in the amount of our respective co-ownership share according to the above mentioned paragraph as surety. We accept the assignation. The Purchaser's obligations stipulated in (2) also apply in consideration of the assigned claims.

(c) The Purchaser, next to us, remains authorised to collect the claim. We are obligated to refrain from collecting the claim as long as the Purchaser complies with his payment obligations toward us and does not default on payments, an application to commence insolvency proceedings has not been made or any other defect of his performance exists. If this is the case, we can demand that the Purchaser discloses the assigned claims and their debtors, provides all details necessary for the collection, supplies the respective documentation and informs the debtors (third parties) of the assignation.

(d) If the realisable value of the sureties exceeds our claims by more than 10%, we shall release securities at the request of the Purchaser at our discretion.

## **§ 7 Warranty claims of the Purchaser**

(1) Unless otherwise determined below, the statutory regulations apply for the Purchaser's rights in case of material defects and defects of title (including wrong or short delivery as well as improper installation, if installed by us, or inadequate assembly instructions). Production-related excess or short deliveries are permissible within a tolerance of 10% of the total order quantity. The total price shall be adjusted accordingly.

(2) The specific basis for our liability for defects is the agreement concluded regarding the quality of the merchandise. Our specifically identified product descriptions (also those of the manufacturer), which were supplied to the Purchaser prior to his order or were included in the agreement similar to these General Terms and Conditions, apply as the agreement regarding the quality of the merchandise. No tacit or implied guarantee is provided by us.

(3) Unless the quality was expressly agreed upon, the statutory regulations are decisive as to whether or not a defect exists (§ 434 (1) sentences 2 and 3 BGB (German Civil Code)). However, we are not liable for public statements of the manufacturer or other third parties (e.g. advertising statements). Normal wear and tear or damage caused by improper use, storage, handling, or maintenance is not to be regarded as a defect.

(4) The Purchaser's warranty claims imply that the defect already existed when the goods were handed over to the Purchaser. If the defect occurs within one year of delivery of the goods, it shall be assumed that such defect was already present when the goods were delivered. After one year, the Purchaser bears the burden of proof for the defect having existed at the time of delivery by us.

(5) Furthermore the Purchaser has to comply with his statutory inspection obligations and requirement to give notice of defects (§§ 377, 381 HGB (German Commercial Code)). If a defect is revealed during the inspection or at a later point in time, we have to be notified of this fact in writing without undue delay. The notification is considered immediate if it occurs within two weeks, whereby the timely dispatch of the notification is sufficient to comply with the deadline. Regardless of this

obligation to inspect and give notice, the Purchaser has to make written notification of obvious defects (incl. wrong or short delivery) within two weeks from delivery, whereby the timely dispatch of the notification is sufficient also in this case. Our liability for the undisclosed defect is excluded if the Purchaser omits the proper examination and/or notice of defect.

(5) If the supplied Goods are defective, the Purchaser may initially demand the remedy of the defect (subsequent improvement) or the delivery of defect-free Goods (replacement delivery) as subsequent fulfilment at his discretion. If the Purchaser does not stipulate his preference regarding these rights, we are entitled to set a reasonable deadline. If the Purchaser does not make a selection within this period, the choice of remedy is transferred to us upon the expiration of this deadline. If the supplied Goods are defect, we are initially entitled to select whether we perform subsequent fulfilment by remedying the defect (subsequent improvement) or delivering a defect-free item (replacement delivery). Our right to refuse the subsequent fulfilment according to the legal prerequisites remains unaffected.

(6) We are entitled to make the subsequent fulfilment subject to the Purchaser paying the due purchase price. However, the Purchaser is entitled to retain an appropriate amount proportionate to the defect.

(7) The Purchaser is obligated to grant us the time and opportunity necessary to perform the owed subsequent fulfilment, particularly to provide the rejected Goods for examination purposes. In the event of a replacement delivery, the Purchaser is obligated to return the defect item according to the statutory regulations. The subsequent fulfilment comprises neither the de-installation nor the reinstallation of the defect item, unless we were originally obligated to perform the installation.

(8) In the event of an actual defect, we are responsible for the costs required for the verification and subsequent fulfilment, particularly transport, shipping, labour and material costs (excluded: de-installation and installation costs). However, if the Purchaser's demand for remedy of defect is apparently unjustified, we are entitled to demand repayment of the incurred costs from the Purchaser.

(9) In urgent cases, e.g. in case of an immediate threat to operational safety or to prevent disproportionate and catastrophic damages, the Purchaser is entitled to remedy the defect himself and demand compensation for the objectively required and direct expenditures. The Purchaser is obligated to inform us immediately of, if possible prior to, such a self-remedy. The right of self-remedy is excluded if we would be entitled to refuse a respective subsequent fulfilment according to statutory regulations.

(10) If the subsequent fulfilment has failed or if an appropriate period of notice provided by the Purchaser has elapsed without success or unnecessary according to the statutory regulations, the

Purchaser may withdraw from the purchase agreement or reduce the purchase price. However, the right to withdrawal does not exist in case of an insignificant defect.

(11) Compensation claims of the Purchaser and/or replacement of futile expenses are only applicable according to § 8 and are excluded for the remainder.

## **§ 8 Other liabilities**

(1) Unless otherwise stipulated in these General Terms of Sale including the subsequent conditions, we are liable according to the respectively relevant regulations in case of violation of contractual and extra-contractual obligations. However, we shall not be liable for any consequential, incidental, indirect or special damages, including, without limitation, any loss of profits.

(2) We are liable for compensation in case of intent and gross negligence -regardless of the legal grounds. In case of slight negligence we are only liable:

a) for damages resulting from the violation of life, body or health,

b) for damages resulting from the violation of essential contractual obligations (obligations the fulfilment of which allows the proper execution of the agreement and the compliance of which the contractual partner may regularly assume and is entitled to assume); however, in this case our liability is limited to the replacement of the foreseeable and typical damage.

(3) The liability limitation arising from paragraph 2 does not apply if we have maliciously omitted to disclose a defect or if we have provided a warranty for the quality of the Goods. This also applies for claims of the Purchaser according to the Product Liability Act.

(4) The Purchaser is only entitled to withdraw from or terminate the agreement based on a violation of obligation not related to a defect if we are responsible for the violation of obligation. The Purchaser's unrestricted right of termination (particularly according to §§ 651, 649 BGB (German Civil Code)) is excluded. For the remainder, the statutory requirements and legal consequences apply.

## **§ 9 Statute of limitation**

(1) By derogation from § 438 (1) No. 3 BGB (German Civil Code) the general period of limitation for claims based on material defects and defect of title is one year from the date of delivery. If acceptance has been agreed upon, the statute of limitation commences with the acceptance.

(2) The above periods of limitation of the sales convention also apply for contractual and extra-contractual compensation claims of the Purchaser which are based on a defect of the Goods, unless the application of the regular statutory period of limitation (§§ 195, 199 BGB (German Civil Code)) would result in a shorter period of limitation in individual cases. The periods of limitation of the Product Liability Act remain unaffected in any event. Apart from that the statutory periods of limitation apply exclusively for compensation claims of the Purchaser according to § 8.

## **§ 10 Publication / Advertising**

The utilisation or disclosure of the existing business relationship with a company of the Clouth Group (e.g. Joh. Clouth GmbH or Clouth Sprenger GmbH) in publications or for advertising purposes is only permitted with the express written consent of Clouth Group Management.

#### **§ 11 Choice of law and place of jurisdiction**

(1) The law of the Federal Republic of Germany applies for these General Terms of Sale and all legal relationships between the Purchaser and us, excluding international uniform law, particularly the United Nations Convention on Contracts for the International Sale of Goods. Prerequisites and effects of the reservation of title according to § 6 are subject to the laws of the respective storage location of the matter, in as far as the elected choice of law in favour of the German law is accordingly inadmissible or ineffective.

(2) If the Purchaser is a merchant in terms of the Commercial Code, a legal person under public law or a special fund under public law, the exclusive - also international - place of jurisdiction for all direct and indirect disputes arising out of or in connection with the contractual relationship is our registered business address in Hückeswagen, Germany. However, we are also entitled to raise claim at the Purchaser's general place of jurisdiction.