

# GENERAL TERMS AND CONDITIONS OF YAMATO SCALE GMBH

## 1. GENERAL

The following terms and conditions apply for our deliveries and performances, including information advice and repairs. We shall not recognize contradicting terms and conditions or deviating business terms of the customer, unless we have given our explicit written consent to their application. In all cases, deviating agreements shall only apply for a specific contract respectively and not for subsequent contracts, unless an explicit agreement to the contrary has been made.

All agreements, subsidiary agreements and amendments to the contract require the written form. This shall also apply for the nullification of this written form clause. Verbal or written assurances that deviate from our contractual terms and/or from the order confirmation shall only be valid with the consent of our managing director(s) or our authorized officers ("Prokuristen") in the numbers required for representation. Our sales administration and field staff are not authorized to make deviating agreements or to grant special conditions.

## 2. INFORMATION AND ADVICE

Information and advice regarding our products shall be provided on the basis of our previous experience. The values indicated in this respect, in particular performance information, are calculated average values. Suitability tests of the goods delivered and compliance with manuals shall not be rendered indispensable by our information or advice. Verbal information is non-binding. Point 10 of these terms and conditions shall apply with respect to any possible liability.

## 3. OFFER AND CONCLUSION OF CONTRACT

Our offers are without engagement. A contract of delivery, or any other contract, shall not come into effect until we have issued written confirmation of the customer order or any other order, or have delivered the goods.

Samples and specimens are non-binding viewing samples. In the event of purchase on the basis of samples and/or specimens, we reserve the right to make deviations that are common for our branch of industry or that are within the scope of usual production. The delivery of samples or specimens does not constitute any guarantee of quality or shelf-life, unless this is explicitly set out in the order confirmation.

Samples and specimens must be returned to us in proper condition within 4 weeks. In case the return does not take place within this period, we shall be entitled to charge the costs for the samples in accordance with the respective price list. The price lists may be requested from us at any time.

Provided an explicit agreement to the contrary has not been made, information in text or picture form (e.g. descriptions, illustrations or drawings) published by us in catalogues, brochures and other publications constitutes conclusive indications of the quality relating to the condition of the products delivered by us and their possible uses application reflects our current level of knowledge. Other manufacturer's information is non-binding. Performance specifications constitute average values depending on the operational conditions. Our information does not constitute any guarantee of quality and conforms to our current level of knowledge is subject to change. We shall not be liable for successful use application.

## 4. PRICES

The prices applicable on the date of delivery as per our binding price list shall be applicable for the invoicing unless a fixed price has been explicitly agreed in writing.

All prices are net prices excluding turnover tax. Turnover tax shall be payable in addition by the customer, in the respective statutory amount for transactions that are subject to turnover tax.

Should our material procurement costs, the energy costs or the wage and non-wage costs increase between the date of the order confirmation and the date of delivery we shall be entitled to adjust any fixed price agreed accordingly. In the event of increase of price by more than 5% the customer shall be entitled to withdraw from contract.

In the absence of any explicit agreement to the contrary, the customer shall additionally bear special packing costs that go beyond the product-specific packing costs, as well as supplementary charges, public charges and customs duties. The return and remuneration of special packing material shall only be on the basis of a separate agreement.

## 5. DELIVERY

Delivery periods (deadlines) shall commence on the date of our order confirmation, however not before receipt of any down payments agreed, and not before final clarification of all details of the order and provision of the required certificates and/or submission of all necessary documents. The delivery period shall be regarded as adhered to deemed to be observed, if the item has left our plant or our warehouse by the end of this delivery period, or we have notified availability for dispatch in the event of it is not being possible to dispatch the goods on time without default on our part.

In cases of periods and delivery deadlines not explicitly stated as "fixed" in the order confirmation, the customer can, following exceeding of these periods or deadlines, grant us an appropriate period of grace for delivery/performance. Not until this period of grace has expired can we be in default.

Periods and deadlines shall be extended by the period by which the customer fails to comply with his obligations with respect to us and without prejudice to our rights from delays in payment by the customer.

This does solely apply in case of correct and on-time self-delivery.

Unforeseeable, extraordinary events, for which we are not responsible, such as industrial disputes, operational disturbances, official measures, transport problems or other cases of force majeure, irrespective of whether these events occur in our company or that of our suppliers, shall release us from the obligations from the respective contract; hindrances of a temporary nature, however, only for the duration of the hindrance, plus an appropriate start-up period. Should delivery subsequently become impossible or unreasonable for one of the parties as a result of such events, both parties shall be entitled to withdraw from the contract.

Our liability for default damages caused by delay that is based on due to a slightly negligent violation of obligations is hereby excluded, unless the violation of obligations leads to damage from injury to life, limb or health. This ruling does not involve any alteration of the burden of proof to the disadvantage of the customer.

We are entitled to effect partial deliveries if these are reasonable for the customer. Partial deliveries can be invoiced separately.

## 6. DISPATCH AND PASSING OF RISK

Provided an explicit agreement to the contrary has not been made, delivery shall be ex works (in case of foreign customers: INCOTERM "EXW – Ex Works"). If one of the INCOTERMS has been agreed as terms and conditions of delivery, the version applicable at the time of conclusion of the contract shall apply. This shall also apply for partial deliveries.

If the goods are sent to a place other than the place of performance at the request of the customer, the customer shall bear all costs resulting from this. We shall be entitled to choose the means of transport and the transport company. The customer must notify us in writing of the nature and scope of any transport damage immediately following receipt of the goods. Insurance of the goods against transport damage, transport losses or breakage shall only be taken out at the explicit request of the customer and for his account.

With deliveries ex-works dispatch and transport shall always be at the risk of the customer. This shall also apply if delivery is made from the warehouse of a third party (third party deals) and for the return of goods or empties (re-usable transport packing). The risk shall pass to the customer as soon as the delivery has been handed over to the person executing the transport or has left our warehouse for the purpose of dispatch or, in the event of delivery ex-works, has left our plant. This shall also apply for partial deliveries.

In the event of dispatch of the delivery being delayed for reasons for which the customer is responsible, or in the event of the customer being responsible himself for arranging transport, the passing of risk shall take place upon notification to the customer of availability for dispatch. Storage costs subsequent to the passing of risk shall be for the account of the customer. In the event of storage in our plant or warehouse the monthly warehousing costs shall be 0.5% of the invoice amount. The right is reserved to provide evidence of higher warehousing costs. We are entitled, following fruitless expiration of a period of grace, to dispose of the goods in an alternative manner and to supply the customer with an appropriately extended deadline.

With deliveries free customer's domicile/warehouse, the risk shall pass to the customer as soon as the goods have arrived at the delivery address stated customer's premises, ready for unloading. This shall also apply for partial deliveries. Unloading must be executed immediately and appropriately, using personnel and unloading means to be provided by the customer in sufficient numbers. We shall charge waiting periods in accordance with the common practice in our branch of industry. In the event of transport to the place of destination failing for reasons that lie within the scope of risk of the customer, the risk shall pass to the customer upon failure of the transport. This shall also apply in the event of unjustified refusal of acceptance by the customer. Point 6.4.6.3 shall apply accordingly.

## 7. PAYMENT

Payment must be made in Euro (€) the currency of invoicing and must be made free from postage and other charges. Payment must only be made to the payment bodies indicated by us. Bills of exchange or checks shall not be deemed to be payment.

Provided an explicit agreement to the contrary has not been made, payment must be made within 30 days of the date of the invoice. In the event of exceeding of the agreed payment periods, we shall be entitled to charge interest at a rate of 8 percentage points p.a. above the base rate of interest (section 247 of the German Civil Code – BGB).

The customer shall be entitled to offsetting with counterclaims or to a right of retention with regard to counterclaims, only if the respective counterclaims are based on the same contractual relationship and if they are undisputed or have been recognized by declaratory judgment. In the event of defects, the customer can, at the most, retain three times the amount of the costs of supplementary performance. When exercising the right of retention, the customer shall be obliged to provide us with security in the amount of the non-paid partial amount. At our discretion, this security can be provided through a bank guaranty or through depositing with a notary public of the customer's choice. The costs of the provision of the security shall be for the account of the customer.

## 8. RESERVATION OF TITLE

We shall reserve title to all goods delivered (conditional commodities) until such time as all claims, irrespective of their legal ground, including claims arising in future or conditional claims from contracts concluded simultaneously or in future, have been fulfilled. This shall also apply if payments are made against especially marked claims. If points of re-

ference exist that justify assumption of illiquidity of the customer or the imminence of such, we shall be entitled to withdraw from the contract without setting a period of grace and to demand release of the goods.

Processing and treatment of the conditional commodities shall be carried out for us as manufacturer in terms of section 950 of the German Civil Code (BGB) and without obliging us. The processed goods shall apply as conditional commodity in terms of point 8.1. In the event of processing and joining of the conditional commodity with other goods by the customer, we shall be entitled to joint ownership of the new item in the ratio of the invoice value of the conditional commodity to the invoice value of the other goods used joined. Should our ownership expire through joining, the customer hereby transfers henceforth the ownership rights, to which he is entitled, to the new inventory or to the item, in the scope of the invoice value of the conditional commodity and shall keep these for us free of charge. The joint ownership rights resulting from this shall be deemed to be conditional commodity in terms of point 8.1.

The customer shall only not be entitled to re-sell, process or join or pledge the conditional commodity with other items or to incorporate this in any other way (hereinafter also referred to briefly as "re-sale"), within the scope of orderly business operation and provided he is not in default. Any other form of disposal over or to dispose of the conditional commodity is forbidden in any other way (e.g. transfer by way of security). Attachment by third parties or other forms of access to the conditional commodity must be notified to us without delay. All intervention costs shall be for the account of the customer unless these can be collected from the third party (opponent in the action in opposition of execution of a judgment) and provided the action in opposition of execution of a judgment has been taken justifiably. If the customer grants his customer deferment of payment of the selling price, he must reserve title to the conditional commodity with respect to this customer, in the same way that we have reserved title to the delivery of the conditional commodity; however the customer is not obliged also to reserve title in terms of the claims against his customer that will not arise until a future date. Apart from this, the customer is not authorized to re-sale.

The claims of the customer resulting from the re-sale of the conditional commodity are hereby assigned henceforth to us. They shall serve as security in the same scope as the conditional commodity. The customer shall only be entitled and authorized to re-sale, if it has been ensured that the claims, to which he is entitled as a result, shall pass to us.

If the conditional commodity is sold by the customer together with other goods not supplied by us at an overall price, the assignment of the claims from the re-sale shall be in the amount of the invoice value of our respectively sold conditional commodities.

If the assigned claim is included in a current account, the customer hereby assigns henceforth to us an amount from the credit balance of the current account, including the closing balance, corresponding to the level of this claim.

Until revocation, the customer is authorized to collect the claims assigned to us. We shall be entitled to revoke if the customer fails to comply correctly with his payment obligations from the business relation with us, or we become aware of circumstances that could result in a major deterioration in the creditworthiness of the customer. If the pre-conditions for exercise of the right of revocation apply, the customer must, at our request, notify us immediately of the assigned claims and the respective debtors, provide all information required for collection of the claims, hand over to us the corresponding documents and notify the debtor of the assignment. We shall also be entitled to notify the debtor of the assignment ourselves. Apart from this, the customer is not entitled to assign the claims, be it on the basis of our direct debit authorization or otherwise. This exclusion of assignment does not apply in case of assignment by way of true factoring announced to us and in the event the factoring revenue exceeds the value of our trusted claim. At the moment of crediting of the factoring revenue our claim becomes due.

In the event of the nominal value (invoice amount of the goods or nominal amount of the claim rights) of the securities available to us exceeding the secured claims by more than 20 per cent in total, we shall, at the request of the customer, be obliged to make corresponding release of securities at our discretion.

If we assert of title, this shall only apply as withdrawal from the contract if we explicitly declare this in writing. The right of the customer to have possession of the conditional commodity shall expire if he fails to fulfill his obligations from the present or another contract concluded with us.

## 9. LIABILITY FOR DEFECTS

We shall not be liable for incorrect or unsuitable use, in particular improper storage / installation or incorrect use by the customer or third parties, incorrect and negligent treatment and handling, in particular through untrained personnel.

The customer is obliged to examine the goods delivered thoroughly for completeness and correctness immediately upon receipt at his premises – even if samples or specimens have been sent beforehand. The delivery shall be deemed to be approved if we do not receive a notification of defects in writing, by telex or by facsimile, within 10 working days from receipt of the goods at the place of destination or, if defects were not apparent during a correct examination, within 10 working days of their detection. This shall also apply for excess deliveries. If excess deliveries are not notified within 10 days from receipt of the goods at the place of destination, these shall be deemed to be approved. Our field staff is not authorized to take receipt of complaints regarding defects and quantities.

In the event of justified complaint regarding defects, the customer shall initially only be entitled to supplementary performance, which we shall provide exclusively through rectification of defects. If supplementary performance should fail or if the fixing of a deadline for this should be unreasonable for the customer (section 440 of the German Civil Code – BGB) or superfluous because

- we conclusively reject supplementary performance,
- we fail to effect the supplementary performance by a contractually determined date or within a specific period and, in the contract, the customer has combined his continued interest in performance with the on-time provision of the performance or
- particular circumstances exist which, under consideration of the interests of both parties, justify immediate withdrawal (section 323, paragraph 2 of the German Civil Code – BGB), the customer shall be entitled to an immediate right to reduction of the purchase price, or, at his discretion, to withdraw from the contract and to demand compensation for damages instead of performance or remuneration of all futile expenditure in accordance with point 10.

The expenditure necessary for the purpose of supplementary performance, in particular transport, travel, work- and material costs, shall be for our account. This shall not apply if the expenditure increases because the item has been taken to a location other than the domicile, place of business or the commercial branch of the customer, unless this relocation is in line with the intended use of the item.

If the customer accepts defective goods although he is aware of the defect, he shall only be entitled to the claims and rights for defects, if he reserves these claims and rights at the time of acceptance on the basis of the defects.

We shall be liable for claims of the customer, as a result of defects to the goods, for 1 year following delivery. Liability for legal defects as per the statutory regulations shall remain unaffected. Liability for damage resulting from defects shall be based on point 10.

The assignment of claims of the customer resulting from defects to third parties is excluded. In the event of complaints regarding defects, payments of the customer may only be withheld in a scope that is in an appropriate relation to the defects asserted.

## 10. LIABILITY FOR COMPENSATION FOR DAMAGES

We shall be liable for damage from injury to life, limb or health in accordance with the statutory regulations.

Apart from this, our liability for violation of obligations and our extra-contractual liability shall be limited to intentional conduct and gross negligence. In this respect, liability for gross culpability of our employees, staff and simple vicarious agents is excluded.

An exception to point 10.2 is the violation of fundamental contractual obligations as well as other obligations whose performances makes the enforcement of the agreement actual possible and on whose compliance the customer may rely (cardinal obligations). In such cases, we shall be liable for our own culpability, as well as for the culpability of one of our employees, staff or simple vicarious agents, even in the event of slight negligence.

Liability shall be limited to damage that is typical for the contract, and with whose occurrence we had to reckon at the time of conclusion of the contract, on the basis of the circumstances known to us at that time.

Further-reaching liability is excluded irrespective of the legal ground. In particular, we shall not be liable for a lack of economic success, loss of profits, indirect damage, consequential damage of defects and damage from claims of third parties.

The above liability rulings shall apply in the same manner for claims for compensation for futile expenditures (section 284 of the German Civil Code – BGB).

Irrespective of their legal ground, claims for compensation for damages directed at us shall become statute-barred within 2 years from the statutorily prescribed commencement of the period of limitations, at the latest, however, within 2 years from delivery of the item.

The above rulings do not involve any reversal of the burden of proof to the disadvantage of the customer.

Claims for compensation for damages under the Product Liability Act shall remain unaffected.

## 11. PLACE OF PERFORMANCE, JURISDICTION, APPLICABLE LAW

Place of performance for all mutual obligations shall be Willich.

Exclusive place of jurisdiction for all disputes shall be Krefeld in the case of merchants. We are, however, entitled to sue the customer at his statutory place of jurisdiction.

The relation between us and the customer is governed by German Law and subject to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the rules of international private law.

Should individual provisions be invalid or become invalid due to circumstances arising at a later date, the validity of the other provisions shall remain unaffected.

## 12. DATA PROCESSING, STORAGE OF CUSTOMER DATA

In accordance with section 33 of the German Federal Data Protection Act (BDSG), we draw attention to the fact that, within the scope of the business relation with our customers, we shall collect and process person-related data using data processing installations and shall use this for our own purposes.