

# Tokyo Sangyo Europe GmbH

## GENERAL TERMS AND CONDITIONS

### 1. Scope of application, form

1.1. These General Terms and Conditions ("GTC") shall apply to all business relations to our customers ("Buyer"). The GTC shall only apply if the Buyer is an entrepreneur (§ 14 German Civil Code – "BGB"), a legal entity or a special fund under public law.

1.2. The GTC shall apply in particular to contracts for the sale and/or delivery of movable Goods ("Goods"), irrespective of whether we manufacture the Goods ourselves or purchase them from suppliers (§§ 433, 650 BGB). Unless otherwise agreed, the GTC version valid at the time of the Buyer's order or, in any case, the version last notified to the Buyer in text form shall also apply as the framework contract for similar future contracts without our reference to them again in each individual contract.

1.3. Our GTC shall apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Buyer shall only become part of the contract if, and to the extent that, we have expressly consented to such application. This requirement of consent shall apply in any case, for example even if we carry out the delivery to the Buyer

without reservation in the knowledge of the Buyer's general terms and conditions.

1.4. Individual contracts made with the Buyer in individual cases (including collateral contracts, supplements and amendments) shall in any case take precedence over these GTC. Subject to proof to the contrary, such individual contract shall prevail upon a written contract or our written confirmation.

1.5. Legally relevant declarations and notifications by the Buyer with regard to the contract (e.g. setting of deadlines, notification of defects, withdrawal or termination notice) shall be made in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Legal formal requirements and further evidence, in particular in case of doubt regarding the legitimacy of the declarant, shall remain unaffected.

1.6. References to statutory provisions shall only be used for clarifying definitions. Even without such clarification, the statutory provisions shall apply, unless they are directly amended or expressly excluded in these GTC.

## 2. Conclusion of contract

2.1. Our offers are subject to change and non-binding. This shall also apply if we have provided the Buyer with catalogs, technical documentations (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents - also in electronic form - to which we reserve ownership and copyright.

2.2. The Goods order by the Buyer shall be considered as a binding offer of contract. Buyer's orders shall be placed by

(i) email at: [\*\*\*]; or

(ii) telephone at: [\*\*\*]

Unless otherwise stated in the order, we shall be entitled to accept this offer of contract within [\*\*\* days/weeks\*\*\*] upon receipt.

2.3. Acceptance can be made either in writing (e.g. by order confirmation) or by delivery of the Goods to the Buyer. In the event of delivery of Goods, acceptance shall only be declared to the extent that the delivery actually takes place.

## 3. Delivery period and delay in delivery

3.1. The delivery period shall be agreed individually or stated by us upon acceptance of the order. If this is not the case, the delivery period is approximately

[\*\*\*] weeks from the conclusion of the contract.

3.2. If we are unable to meet the binding delivery deadlines for reasons for which we are not responsible (Unavailability of performance), we shall inform the Buyer without delay and at the same time notify the Buyer of the expected new delivery deadline. If the performance is also not available within the new delivery period, we shall be entitled to withdraw from the contract in whole or in part; we shall immediately reimburse any consideration already paid by the Buyer. In case the unavailability of performance in this sense shall be deemed to be, in particular, the failure of our supplier to deliver on time, if we have concluded a congruent hedging transaction, neither we nor our supplier shall be at fault or we are not obliged to procure in the individual case.

3.3. The occurrence of our delay in delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder by the Buyer shall be required. If we are in default of delivery, the Buyer may demand a lump-sum compensation for the damage caused by the delay. The lump-sum compensation shall amount to 0.5% of the net price (delivery value) for each completed calendar week of the delay, but not more than a total of 5% of the delivery value of the delayed Goods. We reserve the right to prove that the Buyer has not

suffered any damage at all or that the damage is significantly less than the aforementioned compensated damages.

3.4. The rights of the Buyer pursuant to Section Other liability of these GTC and our statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), shall remain unaffected.

#### **4. Delivery, transfer of risk, acceptance, delay in acceptance**

4.1. Delivery shall be made ex warehouse, which is also the place of performance for the delivery and any subsequent performance. At the Buyer's request and expense, the Goods shall be shipped to another destination (*Versendungskauf*). Unless otherwise agreed, we shall be entitled to determine the type of shipment ourselves (in particular transport company, shipping route, packaging).

4.2. The risk of accidental loss and accidental deterioration of the Goods shall be passed to the Buyer at the latest upon handover. In the case of sale by delivery to a place other than the place of performance, however, the risk of accidental loss and accidental deterioration of the Goods as well as the risk of delay shall pass to the Buyer upon delivery of the Goods to the forwarding agent, the carrier or any other person or

institution designated to carry out the shipment. If acceptance has been agreed, this shall be decisive for the transfer of risk. In all other respects, the statutory provisions of the law of contracts for work and labor shall also apply accordingly to an agreed acceptance. The handover or acceptance shall be deemed equivalent if the Buyer is in default of acceptance.

4.3. If the Buyer is in default of acceptance, but failing to cooperate or delaying our delivery for other reasons for which the Buyer is responsible, we shall be entitled to claim compensation for the resulting damage including additional expenses (e.g. storage costs). For this purpose, we shall charge a lump-sum compensation in the amount of EUR [\*\*\*EUR\*\*\*] per calendar day, starting with the delivery deadline or - in the absence of a delivery deadline - with the notification that the Goods are ready for shipment. The proof of a higher damage and our legal claims (in particular reimbursement of additional expenses, appropriate compensation, termination) shall remain unaffected; however, the lump sum shall be credited against further monetary claims. The Buyer shall be entitled to prove that we have incurred no damage at all or only significantly less damage than the aforementioned lump sum.

## 5. Price and payment conditions

5.1. Unless otherwise agreed in individual cases, our prices current at the time of conclusion of the contract shall apply, and ex warehouse, plus statutory value added tax.

5.2. In the case of sale by delivery to a place other than the place of performance (Section Delivery shall be made ex warehouse, which is also the place of performance for the delivery and any subsequent performance. At the Buyer's request and expense, the Goods shall be shipped to another destination (Versendungskauf). Unless otherwise agreed, we shall be entitled to determine the type of shipment ourselves (in particular transport company, shipping route, packaging).), the Buyer shall bear the transport costs ex warehouse and the costs of any transport insurance requested by the Buyer. Unless we invoice the transport costs actually incurred in the individual case, a lump sum for transport costs (excluding transport insurance) in the amount of EUR [\*\*\*] shall be deemed agreed. Any customs duties, fees, taxes and other public charges shall be borne by Buyer.

5.3. The purchase price shall be due and payable within [\*\*\*30\*\*\*] days from the date of invoice and delivery or acceptance of the Goods. However, we shall be entitled at any time, also within the framework of an ongoing business relationship, to make a delivery in whole

or in part only against advance payment. We shall declare a corresponding reservation at the latest with the order confirmation.

5.4. Upon expiry of the aforementioned payment period, the Buyer shall be in delay. During the period of delay, interest shall be charged on the purchase price at the statutory default interest rate applicable at the time. We reserve the right to assert further damage caused by default. With respect to merchants, our claim to the commercial due date interest rate (§ 353, German Commercial Code – “HGB”) shall remain unaffected.

5.5. The Buyer shall only be entitled to rights of set-off or retention to the extent that its claim has been legally established or is undisputed.

5.6. If it becomes apparent after the conclusion of the contract that our claim to the purchase price is jeopardized by the Buyer's inability to pay (e.g. by filing for insolvency proceedings), we shall be entitled to refuse performance in accordance with the statutory provisions and - if necessary after setting a deadline - to withdraw from the contract (§ 321 BGB). In the case of contracts for the manufacture of unjustifiable items (custom-made products), we may declare withdrawal immediately; the statutory provisions on the dispensability of setting a deadline shall remain unaffected.

## 6. Retention of title

6.1. We retain our title to the Goods sold until all our present and future claims arising from the purchase contract and the ongoing business relationship (secured claims) have been paid in full.

6.2. The Goods subject to retention of title may neither be pledged to third parties nor assigned as security before full payment of the secured claims. The Buyer shall notify us immediately in writing if an application for the opening of insolvency proceedings is filed or if third parties (e.g. seizures) seize the Goods belonging to us.

6.3. In the event of a breach of contract by the Buyer, in particular in the event of non-payment of the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the Goods on the basis of the retention of title. The demand for return does not at the same time include the declaration of withdrawal; we are rather entitled to demand only the return of the Goods and to reserve the right of withdrawal. If the Buyer does not pay the purchase price due, we may only assert these rights if we have previously set the Buyer a reasonable deadline for payment without success or if setting such a deadline is dispensable according to the statutory provisions.

6.4. The Buyer shall be entitled to resell and/or process the Goods subject to retention of title in the ordinary course of business until revoked in accordance with Section Besides us, the Buyer shall remain authorized to collect the claim. We undertake not to collect the claim as long as the Buyer meets his payment obligations towards us, there is no deficiency in his ability to pay and we do not assert the retention of title by exercising our right pursuant to Section In the event of a breach of contract by the Buyer, in particular in the event of non-payment of the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the Goods on the basis of the retention of title. The demand for return does not at the same time include the declaration of withdrawal; we are rather entitled to demand only the return of the Goods and to reserve the right of withdrawal. If the Buyer does not pay the purchase price due, we may only assert these rights if we have previously set the Buyer a reasonable deadline for payment without success or if setting such a deadline is dispensable according to the statutory provisions.. If this is the case, however, we can demand that the Buyer inform us of the assigned claims and their debtors, provide all information required for collection, hand over the relevant documents and inform the debtors (third parties) of the assignment. Furthermore,

in this case, we shall be entitled to revoke the Buyer's authorization to further sell and process the Goods subject to retention of title. below. In this case, the following provisions shall apply in addition.

6.4.1. The retention of title shall extend to the products resulting from the processing, mixing or combining of our Goods at their full value, whereby we shall be deemed to be the manufacturer. If, in the event of processing, mixing or combining with Goods of third parties, their right of ownership remains, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined Goods. Otherwise, the same shall apply to the resulting product as to the Goods delivered under retention of title.

6.4.2. The Buyer hereby assigns to us by way of security, and we hereby accept the Buyer's assignment, of all claims against third parties arising from the resale of the Goods or the product in their entirety or in the amount of our possible co-ownership share in accordance with the above paragraph. The obligations of the Buyer stated in Section The Goods subject to retention of title may neither be pledged to third parties nor assigned as security before full payment of the secured claims. The

Buyer shall notify us immediately in writing if an application for the opening of insolvency proceedings is filed or if third parties (e.g. seizures) seize the Goods belonging to us. shall also apply in respect of the assigned claims.

6.4.3. Besides us, the Buyer shall remain authorized to collect the claim. We undertake not to collect the claim as long as the Buyer meets his payment obligations towards us, there is no deficiency in his ability to pay and we do not assert the retention of title by exercising our right pursuant to Section In the event of a breach of contract by the Buyer, in particular in the event of non-payment of the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the Goods on the basis of the retention of title. The demand for return does not at the same time include the declaration of withdrawal; we are rather entitled to demand only the return of the Goods and to reserve the right of withdrawal. If the Buyer does not pay the purchase price due, we may only assert these rights if we have previously set the Buyer a reasonable deadline for payment without success or if setting such a deadline is dispensable according to

the statutory provisions.. If this is the case, however, we can demand that the Buyer inform us of the assigned claims and their debtors, provide all information required for collection, hand over the relevant documents and inform the debtors (third parties) of the assignment. Furthermore, in this case, we shall be entitled to revoke the Buyer's authorization to further sell and process the Goods subject to retention of title.

6.4.4. If the realizable value of the securities exceeds our claims by more than 10%, we shall release securities of our choice upon the Buyer's request.

## **7. Buyer's claims for defects**

7.1. The statutory provisions shall apply to the Buyer's rights in the event of Goods defects and defects of title (including wrong and insufficient delivery as well as improper assembly or defective assembly instructions), unless otherwise provided below. Claims from supplier recourse are excluded if the defective Goods have been further processed by the Buyer or another entrepreneur, e.g. by installation in another product.

7.2. The basis of our liability for defects is above all the agreement reached on the quality of the Goods. All product descriptions and manufacturer's specifications which are the subject matter

of the individual contract or which were publicly announced by us (in particular in catalogs or on our Internet homepage) at the time of the conclusion of the contract shall be deemed to be an agreement on the quality of the Goods.

7.3. Insofar as the quality has not been agreed on, it shall be assessed in accordance with the statutory regulation whether a defect exists or not (§ 434 para 1 sentence 2 and 3 BGB). However, we shall not be liable for public statements by other third parties (e.g. advertising statements) to which the Buyer has not drawn our attention as being decisive for the purchase.

7.4. As a matter of principle, we shall not be liable for defects of which the Buyer is aware when concluding the contract or is not aware due to gross negligence (§ 442 BGB). Furthermore, the Buyer's claims for defects presuppose that he has complied with his statutory obligations to inspect and give notice of defects (§§ 377, 381 HGB). If a defect becomes apparent during delivery, inspection or at any later time, we must be notified of this immediately in writing. In any case, obvious defects shall be notified to us in writing within **\*\*\*days\*\*\*** working days from delivery and defects which are not apparent upon inspection within the same period from discovery. If the purchaser fails to carry out the proper inspection and/or to give notice of defects, our liability for the defect not reported or

not reported in time or not reported properly shall be excluded in accordance with the statutory provisions.

7.5. If the delivered item is defective, we may initially choose whether to provide subsequent performance by remedying the defect (subsequent improvement) or by delivering an item free of defects (replacement delivery). Our right to refuse subsequent performance under the statutory conditions shall remain unaffected.

7.6. We shall be entitled to make the subsequent performance only on the condition that the Buyer pays the purchase price due. However, the Buyer shall be entitled to retain a reasonable part of the purchase price in relation to the defect.

7.7. The Buyer shall give us the time and opportunity required for the subsequent performance owed, in particular to hand over the rejected Goods for inspection purposes. In the event of a replacement delivery, the Buyer shall return the defective item to us in accordance with the statutory provisions. The supplementary performance shall neither include the removal of the defective item nor the re-installation if we were not originally obliged to install the item.

7.8. We shall bear or reimburse the expenses necessary for the purpose of inspection and subsequent performance,

in particular transport, travel, labor and material costs and, if applicable, removal and installation costs, in accordance with the statutory provisions if a defect is actually present. Otherwise, we shall be entitled to claim reimbursement from the Buyer of the costs incurred as a result of the unjustified request for rectification of the defect (in particular inspection and transport costs), unless the lack of defectiveness was not apparent to the Buyer.

7.9. In urgent cases, e.g. in the event of a risk to operational safety or to prevent unreasonable damage, the Buyer shall have the right to remedy the defect itself and to demand reimbursement from us for the expenses objectively necessary for this purpose. We are to be informed immediately of such self-remedy, preferably in advance. The right of self-remedy shall not exist if we would be entitled to refuse a corresponding subsequent performance according to the statutory provisions.

7.10. If the supplementary performance has failed or a reasonable period set by the Buyer for the supplementary performance has expired without successful performance or is dispensable according to the statutory provisions, the Buyer may withdraw from the purchase contract or reduce the purchase price. In the case of an insignificant defect, however, there shall be no right of withdrawal.

7.11. Claims of the Purchaser for damages or reimbursement of futile expenses shall also exist in case of defects only in accordance with Section 8 and shall otherwise be excluded.

## **8. Other liability**

8.1. Unless otherwise provided in these GTC including the following provisions, we shall be liable for breach of contractual and non-contractual obligations in accordance with the statutory provisions.

8.2. We shall be liable for damages - irrespective of the legal grounds - within the scope of liability for fault in the event of intent and gross negligence. In the event of simple negligence, we shall be liable, subject to statutory limitations of liability (e.g. due care in our own affairs; insignificant breach of duty), only

(a.i.1.a.i) for damages resulting from injury to life, body or health,

(a.i.1.a.ii) for damages resulting from the breach of an essential contractual obligation (the fulfillment of which enables the proper execution of the contract in the first place and in compliance with which the contractual partner regularly relies and may rely); in this case, however, our liability shall be limited to the compensation of the foreseeable, typically occurring damage.

8.3. The limitations of liability resulting from Section We shall be liable for damages - irrespective of the legal grounds - within the scope of liability for fault in the event of intent and gross negligence. In the event of simple negligence, we shall be liable, subject to statutory limitations of liability (e.g. due care in our own affairs; insignificant breach of duty), only shall also apply to third parties as well as to breaches of duty by persons (also in their favor) whose fault we are responsible for according to statutory provisions. They shall not apply if a defect has been fraudulently concealed or the guarantee for the quality of the Goods has been assumed and for claims of the Buyer under the Product Liability Act.

8.4. The Buyer may only withdraw from or terminate the contract due to a breach of duty that does not consist of a defect, if we are responsible for the breach of duty. A free right of termination of the Buyer (in particular according to §§ 650, 648 BGB) is excluded. In all other respects, the statutory prerequisites and legal consequences shall apply.

## **9. Statute of limitations**

9.1. In deviation from § 438 para 1 no. 3 BGB, the general limitation period for claims arising from material defects and defects of title shall be one (1) year from delivery. Insofar as acceptance has

been agreed, the limitation period shall commence upon acceptance.

9.2. The above limitation periods of the law on sales shall also apply to contractual and non-contractual claims for damages of the Buyer due to a defect of the Goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases. The Buyer's claims for damages pursuant to sentence 1 and paragraph (i) of Section 8.2 as well as pursuant to the German Product Liability Act shall become time-barred exclusively in accordance with the statutory limitation periods.

## **10. Governing law and jurisdiction**

10.1. These GTC and the contractual relationship between us and the Buyer shall be governed by the laws of the Federal Republic of Germany, excluding

international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

10.2. If the Buyer is a merchant within the meaning of the HGB, a legal entity or a special fund under public law, the exclusive - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be our registered office in Frankfurt am Main. The same shall apply if the Buyer is an entrepreneur within the meaning of § 14 BGB. However, we shall also be entitled in all cases to bring an action at the place of performance of the delivery obligation in accordance with these GTC or a priority individual agreement or at the general place of jurisdiction of the Buyer. Overriding statutory provisions, in particular regarding exclusive jurisdiction, shall remain unaffected.