

October 2012

**A. Application**

These Standard Terms and Conditions will apply to all contracts and services (hereafter referred to as "Deliveries") that we carry out, also those in the future. They will be considered as having been acknowledged at the latest when an order is issued or a Delivery accepted. We may change these Terms and Conditions at any time. Contrary terms and conditions are invalid, even when not explicitly rejected; they will only apply when acknowledged by us in each individual case. The invalidity of individual Terms and Conditions will not impair their validity as a whole.

1. Our Terms and Conditions of Delivery only apply to companies within the meaning of § 14 of the German Civil Code ("BGB").

**B. Conclusion of a contract**

1. Our quotations are subject to change. A contract will only come into existence when we have confirmed the order in writing. The contract will come into force at the latest on the delivery of the goods should we not confirm the order in writing. In this case the delivery note will be considered the order confirmation. The nature and scope of our delivery will be governed solely by our written order confirmation.

2. We reserve rights of ownership and copyright to cost estimates, drafts, drawings, product descriptions and other documents; they may only be disclosed to third parties with our consent. Drawings and other documents forming part of quotations must be returned on request and in any event should we not be awarded the order. The customer assumes a guarantee that any drawings, models, samples or other documents he provides and on the basis of which we deliver goods do not infringe the industrial property rights of third parties. We are entitled – without any obligation to investigate the legal situation - to cease any further activity and to demand compensation from the customer should we be able to prove his negligence, should third parties forbid us to manufacture and deliver such objects by invoking such protected property rights. The customer also undertakes to release us immediately from all third party claims associated with documents provided to him.

3. We reserve the right to reject small orders or to establish minimum acceptance quantities or invoice amounts. As a rule, a minimum order size of EURO 1,000.00 per product group will apply. We reserve the right to deviate from physical and chemical specifications, including colours and order quantities up to an amount of 10% depending on the product, to the extent that this is either customary in the trade or technically unavoidable, provided that this can reasonably be expected of the customer. In the case of call-off orders, we are entitled to procure the material for the whole order and to manufacture the whole quantity ordered immediately. Accordingly, unless this has expressly been agreed, any changes desired by the customer may no longer be taken into account after the order has been issued.

4. Agreements made by telephone or verbally with employees of CARLISLE Construction Materials GmbH or its affiliate companies before or at the time the contract is concluded require CARLISLE Construction Materials GmbH's written confirmation in order to be valid, unless such employees have been granted an appropriate legal right to represent CARLISLE Construction Materials GmbH. Verbal changes and additions require CARLISLE Construction Materials GmbH's written confirmation once the contract has been concluded.

**C. Delivery and delivery time**

1. Unless we have expressly confirmed an agreed delivery date or period in writing as "fixed", the time of the delivery will only be considered to have been agreed approximately, even when we agree a delivery date or delivery period with the customer. A confirmed delivery period is subject to the reservation that we ourselves receive the delivery correctly, completely and punctually. The delivery period will have been complied with when the goods to be delivered leave our factory or we confirm to the customer that the goods are ready for delivery before the expiry of the delivery period. The delivery period will not begin until the customer has correctly fulfilled his obligations, such as for example the provision of technical data and documents, permits and a prepayment or provision of a payment guarantee.

2. All temporary obstacles to delivery due to force majeure absolve us from an accepted obligation to deliver for as long as they last. This will also apply should delivery be impeded by other unforeseen obstacles for which we are not responsible, such as

fire, floods, industrial disputes, energy and raw material shortages or measures imposed by public authorities.

Claims for compensation on account of arrears, impossibility of fulfilment or non-fulfilment should we, our legal representatives or senior employees be guilty of minor negligence will be limited to foreseeable and typical damage. Liability will not be limited in cases of damage due to intent or gross negligence. The customer's legal right of rescission will not be impaired as long as the relevant legal conditions are fulfilled. In the case of orders made up of several deliveries, failure to make a delivery or a defective or delayed delivery will not affect other deliveries of the order.

3. Part deliveries are permitted.

4. Irrespective of the place from which the delivery is made, the goods are transported at the customer's risk. Should the goods be ready for delivery but the delivery or acceptance be delayed for reasons for which we are not responsible, risk will pass to the customer at the time notification is received that the goods are ready to be delivered.

5. It is basically not permitted to return goods sold that are free of defects. Should returned goods exceptionally be accepted, the net price applicable on the day of the return will be credited. The net price applicable on the day of the delivery will be credited should this price be below the net price on the day of the return. In addition, we reserve the right to charge a fee for processing and handling. This section 5 will not apply should reservation of title have been applied.

6. Should the initiation of insolvency proceedings be applied for, an affirmation in lieu of an oath in accordance with § 807 of the German Code of Civil procedure be made or payment difficulties be experienced or should we become aware of a material deterioration in the customer's financial situation after the contract has been concluded, we are entitled to terminate deliveries immediately and to refuse to fulfil current contracts should the customer fail to provide the agreed consideration or adequate security at our request.

7. Goods and materials provided by the customer in order to carry out the order must be delivered punctually and free of charge to our factory and also free from defects and in the agreed quality together with an agreed additional quantity or an appropriate amount to cover wastage. Should the customer fail to do this, we are entitled to charge him for any additional costs thereby incurred and at our discretion either not to begin or to interrupt production of our delivery. We reserve the right to invoice the costs of prototypes and the tools required to manufacture them (moulds, punches, dies etc.). We will invoice the costs of tools required for mass production on a pro rata basis. All tools will under all circumstances remain our property.

**D. Reservation of title**

1.a) We reserve title to all goods we deliver until all receivables due from the customer arising from our business relationship, including conditional and ancillary receivables, have been fully paid. That will also apply to receivables that arise in the future.

b) We are entitled to take possession of reserved goods should the customer fall into arrears in honouring claims due from him in connection with the business relationship. Unless we expressly declare the rescission of the contract, the demand that the goods be returned or the repossession of the reserved goods will not constitute rescission of the contract. We are entitled to demand the immediate return of the goods to the exclusion of any rights to withhold the goods unless the associated counter claims have been established in law or are undisputed.

c) Irrespective of the customer's obligation to pay for the goods, we are entitled with respect to the repossessed goods

aa) to sell them by private contract at the best possible terms, having first threatened sale, and to credit the proceeds, or

bb) to credit the contractual price – less cash discounts, rebates, and other price reductions, subject to the deduction of the decrease in value. We are also entitled under all circumstances to deduct any costs from the credit note that we incur in recovering the goods.

d) The customer is required to notify us immediately of the seizure of the goods or of any other impingement by third parties of our rights of ownership and to confirm these rights in writing both to us and to

third parties. The customer is forbidden to mortgage the reserved goods or to assign them by way of security.

e) The customer is required to provide adequate insurance cover for the reserved goods, especially against fire and theft. Claims against the insurance company arising from damage to the reserved goods will, with immediate effect, be considered as having been assigned to us up to the value of the reserved goods. The customer is required to inform the insurance company that these claims have been assigned.

f) Any processing or conversion of the reserved goods by the customer into a new product will be carried out on our behalf as manufacturer within the meaning of § 950 of the Civil Code without this entailing any obligations on our part. The processed or converted goods will be considered reserved goods as defined in these Terms and Conditions.

g) Should our goods be combined, mixed or mingled with goods that do not belong to us (§§ 947 and 948 of the Civil Code), we are entitled to co-ownership of the new object or the total quantity in proportion to the value of our reserved goods at the time of the combination, mixing or mingling to the value of the other combined, mixed or mingled goods. The contractual parties are agreed that, should the customer acquire sole ownership of the new product, the customer grants us co-ownership of the new product in proportion to the value of processed or combined, mixed or mingled reserved goods to the total value of the new product or total quantity. The new product thereby created will be considered reserved goods within the meaning of these provisions. The customer will take care of the product on our behalf with the diligence of a conscientious businessman and undertakes to provide us with the information required to exercise our rights and to allow us to inspect his documents.

2.a) The customer is entitled to resell the reserved goods as part of his normal business activities. The resale will be considered equivalent to use for the fulfilment of a contract for services or a sale under contract for goods and services. The customer's receivables from the sale of the reserved goods together with all ancillary rights are assigned to us with immediate effect, irrespective of whether or not the goods have been processed, converted, combined or mixed and whether they have been resold to one or several customers. Should the assigned receivable due from the garnishee have been included in a current invoice, the agreed assignment will also extend to claims from current accounts. The assigned receivables serve to secure all of our rights and receivables in accordance with D.1.a).

b) The assignment to us of the purchase price due will be considered to have been agreed in accordance with D.2.a) up to the amount of the sales price of the reserved goods should the customer sell the reserved goods after combination, mixing, processing or conversion. Moreover, it will be considered to have been agreed that, in addition to the resale price referred to above, 10% of our sales price will be assigned that will be netted against interest and expenses after the amount has been received, whereby the dunning fee that has not yet been exhausted will be refunded. Should the customer provide a related service together with the sale of the reserved goods and should he not distinguish between the reserved goods and this service in the invoice that he issues to his customer but issue a total invoice, the amount of our sales price included in this invoice is assigned to us.

c) Should the customer use the reserved goods in order to fulfil a contract for services or a sale under contract for goods and services, the same amount of the receivables from the contract for services or sale under contract for goods and services will be assigned to us in advance as stipulated in D.2.a).

d) The customer is only permitted and authorised to resell or otherwise use the reserved goods subject to the condition that the receivables referred to in sections D.2.a) to b) pass to us and that the name of our product is shown in all invoice copies, delivery notes and other documents. The customer is not entitled to make any other use of the reserved goods.

e) Despite this assignment, the customer is entitled to collect the receivables arising from the resale. Our authority to collect will not be affected by the customer's authority to collect. We will however not collect the receivables ourselves as long as the customer properly fulfils his payment obligations to us.

We are however entitled to revoke the customer's authority to resell the reserved goods and to collect receivables assigned to us with immediate effect should the customer fall into arrears with his payments to us or find himself in payment difficulties due to a major deterioration in his asset situation. The authorisation to resell the reserved goods and to collect receivables for the reserved goods assigned to us will automatically end should insolvency proceedings with respect to the customer's assets be applied for, all payments cease, an assurance in lieu of an oath in accordance with § 807 of the German Code of Civil procedure be given or should ownership of the customer's company change due to payment difficulties. The customer is required to return the reserved goods to us immediately and to procure direct possession for ourselves or an authorised representative appointed by us should we revoke the authority to resell the reserved goods or should this authority be annulled automatically. The customer is required in this situation to provide us with information on the assigned receivables and from whom they are due as well as all information required to collect them, to hand over the associated documents and to notify the debtors of the assignment. The customer is required to pay all the costs incurred in recovering possession of the reserved goods.

3.a) Reservation of title as described in the above provisions will remain in force should some of our receivables be included in a current invoice and the balance taken and acknowledged. Reservation of title will then apply to the receivable from the current account balance.

b) Reservation of title as described in the above provisions will end when all receivables referred to under D.1.a.) above have been honoured. Title to the reserved goods will then pass to the customer and he will become entitled to the assigned receivables.

4. We are required to release securities of our choice at the customer's request, should the total realisable value of all the securities provided on our behalf exceed our receivables by more than 10%.

#### **E. Prices and payment**

1. Unless anything different has been agreed with the customer, deliveries will be made, services provided and invoices issued in accordance with the prices and terms and conditions in force on the day the goods were delivered or picked up. Unforeseeable changes in the costs of raw materials, wages, energy and other cost inputs for which we are not responsible entitle us to adjust our prices accordingly. We may choose the method of delivery to our immediate customer, free of charge either by post, to any freight railway station in Germany or by any other customary method. The customer will pay the difference between the cheapest method of delivery and any higher expenses should faster delivery be stipulated (e.g. by air freight or express). The customer will pay the costs of cartage. No credit note will be granted should the customer pick up the goods. Unless anything different has been agreed, we are free to deliver ex factory or from a branch.

2. The customer is required to make all payments in Euro.

3. Unless we have quoted anything to the contrary, our invoices are payable immediately and free of any charges, postage and expenses. With the exception of the initial reminder declaring arrears, we will charge the customer EURO 3.00 for every reminder, unless the customer can prove that we have incurred no expense at all or expenses considerably lower than this amount. We reserve the right to additional claims to compensation.

4. Cash discounts will only be granted provided that all due payment obligations from prior deliveries are made and we have received the invoice amount in cash or on our bank account punctually by the due dates mentioned above. A cash discount cannot therefore be given on the issue of a bill of exchange; in the case of non-cash payment and especially payment by cheque, the beginning of the payment period will in all cases be governed by the invoice date and the end of the payment period by the date on which our account is credited. A cash discount cannot be granted in the event of payment or credit subject to reservation, conditional, or subject to any other qualifications. The customer is responsible for the risks of payment in transit.

5. The date payment is received will be considered the date on which we may dispose of the amount or it is credited to our bank account. The customer is liable for the risks of payment in transit. In the event of payment arrears by the customer, we are entitled to charge interest at the rate of 8% per annum over base rate for as long as payments are in arrears.

This will not limit our right to pursue additional claims for compensation.

6. In the event of payment arrears, we are also entitled to opt to declare outstanding purchase price instalments or other receivables due from the customer as due for immediate payment and to make further deliveries under this or other contracts dependent on the prior provision of collateral or payment at the time of the delivery. We are entitled to rescind the contract and to invoice the customer with the costs incurred to date, including foregone profit, should the customer fail to comply with our demand for prepayment or the provision of collateral within a reasonable period of time.

7. We do not pay interest on prepayments or down payments.

8. The customer is only entitled to net or withhold payments should we not dispute the counterclaim or it have been established in law. Deductions that have not been expressly agreed will not be accepted; warranty claims are not affected.

9. Payments can only be accepted in complete discharge of the debt on the bank account we state on the invoice or to members of our company's staff to whom we have given the authority to accept cash.

#### **F. Warranty**

1. In transactions with professional traders, our deliveries and services are in all cases governed by the legal obligations to inspect the goods and report defects.

2. Entrepreneurs who are not professional traders must notify us in writing of obvious defects within a period of two weeks from the receipt of the goods; otherwise, the pursuit of warranty claims is excluded. This period will have been complied with if notification is sent off in time. The entrepreneur bears the whole burden of proof that all the preconditions of the claims are fulfilled, especially with respect to the defect itself, when the defect was established and that the defect was notified in time.

3. The warranty period for goods that we deliver according to contract as new goods is one year; there is no obligation to provide a warranty for goods that we deliver according to contract as not being new products; compensation claims will be subject to the following conditions. The customer is only entitled to compensation claims on account of a guaranteed quality when the assumption of the guarantee is specifically intended to insure the customer against the damage that has occurred. With the exception of injury to life, limb and health by ourselves, our legal representatives and agents, other warranty claims to compensation due to minor negligence on our part or that of our legal representatives and agents are excluded, unless the claims are foreseeable and typical for this type of contract and are related to the infringement of essential contractual obligations; claims for compensation will not be excluded when we, our legal representatives or agents are guilty of having acted deliberately or with gross negligence.

4. The provisions of sections 2 and 3 above will apply to claims by the customer under a right of recourse in accordance with the rules governing the purchase of consumer goods.

5. Information we provide describing the nature of the goods or services delivered, e.g. with regard to sizes, weights, durability and consumer values, constitute descriptions or labels only and not guaranteed qualities; unless anything different has been agreed, they should only be regarded as approximations subject to deviations customary in the trade. Guaranteed qualities must in every case be explicitly described as such in writing. Deviations from samples or prior deliveries will be avoided as far as this is technically possible. We reserve the right to make changes to the extent that these are reasonable for the customer, especially when such changes serve technical progress and provided that the change to the object delivered is not major. Only major deviations justify a warranty claim in accordance with F.1.2.

6. We are not responsible for defects caused by natural wear and tear or damage due to improper use not caused by us, incurred above all in storage or should the defect emerge as a result of use of the goods in a manner not in accordance with the contract to which we in every individual case have not given our consent.

#### **G. Liability**

The following will apply with respect to companies:

1. In accordance with long-standing practice in our business, contractual and ex-contractual compensation claims pursued by the customer against us, our legal representatives, agents and employees, irrespective of their nature and their legal justification, arising for instance from negligence at the time the contract was concluded, positive breach of contract, tort, settlement between joint and several debtors are in all cases excluded, unless relating to foreseeable, damage typical for this type of contract arising from the infringement of cardinal contractual obligations or the damage is due to intentional or grossly negligent behaviour on our part or on the part of our senior employees. This exclusion of liability will not affect claims for compensation due to injury to life, limb or health caused by ourselves, our legal representatives or agents.

2. This treatment of liability will also apply to advice we give, both verbally and in writing, and as a result of tests or in any other way; the customer is particularly not exempt from the liability to verify himself the suitability of the Delivery for the intended uses to be made of it.

3. This exclusion of liability will not affect claims made under the German Product Liability Law.

#### **H. Data protection**

Due to the provisions of the German Federal Data Protection Law, we draw your attention to the fact that that we store and process our accounting and address data by means of electronic data processing.

#### **I. Place of fulfilment, legal venue, applicable law**

1. The place of fulfilment is Hamburg.

2. Hamburg is the legal venue for all claims pursued by professional traders arising from business relationships, especially from our Deliveries, even when sales or Deliveries are made from a different branch. This legal venue that exists above all to carry out dunning activities is also responsible for disputes concerning the origin and the validity of the contract. We are however also entitled to sue the customer at the legal venue responsible for his registered office. Should the customer have his registered office outside the Federal Republic of Germany, we are also entitled to opt to have disputes arising from this contract or its validity decided without recourse in accordance with the Settlement and Arbitration Code of the International Chamber of Commerce in Paris by one or more arbitrators named under this arbitration code to the exclusion of the ordinary jurisdiction of the courts. The arbitration tribunal should be based in Hamburg.

3. Only the law of the Federal Republic of Germany will apply. The application of the Convention on Contracts for the International Sale of Goods is excluded.