

## **Terms and Conditions of Purchase - Version: 01/06/2013**

Note: This is a translation of the German version. In cases of uncertainty or conflict, the German version shall prevail.

### **I. Application**

1. These Purchase Conditions (Conditions) shall apply to all our present and future orders for merchandise and to the performance of such orders. Seller's conditions diverging from these Conditions will not be acknowledged unless otherwise stipulated within these Conditions or otherwise agreed in the contract with the Seller. Should we accept the merchandise not expressly objecting these Conditions, the Seller may in no case assume our consent with his conditions.
2. Any oral agreements made by our employees shall become binding on us only if and in so far as we confirm them in writing.
3. Any offer made by Seller will be free of charge and not binding to us.
4. Any trade terms shall, in cases of doubt, be interpreted according to the Incoterms as amended from time to time.

### **II. Prices**

1. The contract price shall be regarded as a fixed price.
2. In case of "free house" deliveries, deliveries "free ...place of destination" and other "free"-deliveries, the price shall include the costs for freight and packaging. Ancofer will otherwise bear packaging/packing costs only where this has been expressly agreed.
3. In case of "unfree" delivery, we shall bear the lowest possible freight rates only, unless a special kind of delivery has been requested by us.

### **III. Payment**

1. Unless otherwise agreed the following terms of payment shall apply: Payment shall be made either within 14 days with 3 p.c. discount or within 30 days without discount. Should the Seller's conditions for payment be more favourable, they shall prevail.
2. Payment and discount periods shall begin with the receipt of the invoice but not before the receipt of the merchandise. In case of services, such periods shall begin only after the transaction has been approved by us. If the delivery includes documentation (e.g. test certificates) or similar written material, such periods shall begin only after receipt of the same as agreed upon in the contract.
3. Where Ancofer accepts premature delivery, the due date for payment shall nonetheless remain based on the agreed delivery date.
4. Payment shall be made by cheque or by bank remittance. Payment is considered to have been made in time if the cheque has been mailed on the due date or the bank has been instructed to make the remittance on the due date.
5. We will be liable for interest only if and so far as we are in arrears for payments, not at their mere maturity date. The interest rate shall then be 5 % above base rate in accordance with Article 247 of the German Civil Code (BGB). We are, in any case, entitled to establish a lower rate than claimed by the Seller.
6. We shall be entitled to all statutory rights as to the to set-off and retention of our claims against the Seller's.
7. Based on a power of attorney of the AG der Dillinger Hüttenwerke, Vertriebsgesellschaft Dillinger Hütte GTS GmbH, Stuttgart and Jebens GmbH of Korntal-Münchingen, we shall be entitled to offset all claims which accrue to the Seller against us against all claims accruing to us or the above companies against

the Seller, regardless of the legal reason. This shall also apply if claims against one another have different maturities.

#### **IV. Delivery Times / Late Delivery**

1. All contractual terms and dates of delivery shall be binding to the Seller. The Seller shall immediately inform us in case of imminent delays and submit to us adequate proposals to remedy the consequences of such delays. Performance/delivery prior to the agreed date(s) shall be deemed to entitle Ancofer to refuse acceptance of the service/goods until the agreed date(s).
2. Unless otherwise agreed in writing, any contractual terms and dates of delivery shall be considered to be met only if and in so far as the merchandise has been handed over to us at such dates. This provision shall also apply to all shipping documents, operating manuals and other certificates, documentation, etc., which form part of the contractual partner's scope of supplies/services.
3. If and in so far as the Seller defaults in delivery, we shall be entitled to our statutory rights. In particular, we shall have the right to claim damages for non-performance if and in so far as the Seller fails to effect delivery after a reasonable grace period set to him has elapsed. Our right to request delivery shall be excluded only if the Seller has compensated us for our damages.
4. The Seller may claim relief for his default by reason of lack of any documents to be submitted by us only in such cases where we have, upon the Seller's reminder, failed to deliver such documents to him.

#### **V. Force Majeure**

Instances of Force Majeure, labour disputes, disturbances, official and government sanctions and other serious, unforeseeable and unavoidable occurrences shall for their duration be deemed to exempt the contracting parties from fulfilment of their respective obligations to the extent to which such occurrence or occurrences hinders such fulfilment. This provision shall also be deemed to apply in cases in which such occurrence or occurrences occur(s) when the contracting party affected by such occurrence(s) is in arrears. The contracting parties hereby undertake wherever and whenever this can reasonably be expected to provide the necessary information immediately and to revise in good faith their respective obligations in order to take account of the changed circumstances.

#### **VI. Retention of Title**

1. Ancofer will recognise any simple retention of title by the contractual partner only in cases in which ownership of the goods is transferred to Ancofer upon payment and only where Ancofer is entitled to dispose of the goods onward and forward them in the ordinary course of business. Ancofer will not recognise or accept any special forms of retention of title and, in particular, transferred, subsequent, extended, current-account or group retention of title. Ancofer accepts no contracting party's terms and/or conditions to the contrary; all such terms and conditions are hereby rejected and shall not be deemed to be part of the contract.
2. The Seller may claim return of the merchandise on the basis of the retention clause only if he has previously withdrawn from the contract.

#### **VII. Performance of Deliveries and Passing of Risks**

1. The Seller shall bear the risks of accidental loss and accidental deterioration of the merchandise until it has been handed over to us at its place of delivery. This provision shall also apply in cases of "free delivery" (franco domicile)

2. Any and all part deliveries shall be deemed to require Ancofer's prior agreement and shall be marked and indicated as part deliveries.
3. Excess or short deliveries will be accepted only in accordance with current trade practise.
4. Unless otherwise agreed in writing, the Seller shall bear the costs of packing. Should we, in a given case, agree to bear such costs, the Seller will charge us with the lowest possible costs only. Any obligations to take back packing material shall be governed by the Packaging Decree (Verpackungsverordnung) of 21.08.1998, as amended from time to time.

### **VIII. Declarations of Origin**

Where the Seller makes a declaration in regard to the origin of the merchandise, the following terms shall apply:

1. The Seller will allow verification through customs authorities and submit all necessary information as well as any required certification.
2. The Seller shall compensate us for any damages and losses incurred to us, if and in so far as the competent authorities, due to any deficient certification or impossibility to verify, fail to acknowledge the declared origin, unless he proves that he is not responsible for such consequences.

### **IX. Termination**

1. Ancofer shall be deemed entitled to terminate the contract in part or in whole without statement of grounds. In such cases, Ancofer shall be deemed obliged to payment of all supplies and/or services furnished up to the time of termination and to appropriate payment for any and all material procured and work performed. Any and all more extensive claims on the part of the contracting party shall be deemed to be excluded.
2. Ancofer shall also be deemed to be entitled to terminate the contract in cases, inter alia, in which application is made for the initiation of insolvency proceedings against the contracting party's assets and/or in which the contracting party discontinues payments. The contracting party shall be deemed to be entitled to acquire under appropriate conditions material and/or semi-fabricated goods, including any special equipment.

### **X. Warranty Provisions and Statute of Limitations**

1. The Seller shall deliver the merchandise free of any material and legal defects. He will certify in particular that his deliveries and his services comply with the state of the art and with any contractual requirements and standards and that they are adequately suitable for their intended use and purpose.
2. We will examine the quality and quantity of the merchandise upon its receipt to the extent both reasonable and technically feasible for us. Any notice of a defect will be deemed to be in time if it reaches the Seller within eight working days by letter, Telefax, e-mail or by telephone. The period for notification of defects/deficiencies shall in the case of obvious defects/deficiencies begin upon receipt of the goods at the place of destination and in the case of non-obvious defects/deficiencies, upon discovery by Ancofer or, in the case of drop-shipping transactions, by Ancofer's customer(s).
3. In the event that the merchandise shows a defect, we may exercise our statutory rights. If the Seller tries to repair the merchandise, such remedy is considered to have failed after the first unsuccessful attempt. We shall have the right to withdraw from the contract also in such cases where a breach of contract is not considered to be material.

4. Where the merchandise was already defective at the time the risk passed to us, we may claim from the Seller any expenditures in connection with such defect which we must pay to our customer.
5. Any claims arising from defects of the merchandise will be governed by the statutory limitation periods. Such periods will begin with the timely notification of the defect in accordance with the provisions of No. 2 of this clause. The Seller's warranty for the merchandise will elapse at the latest ten years after its delivery. Such time limit will not apply in those cases where our claims rely on facts which the Seller knew or should have known and which he did not reveal to us.
6. The Seller hereby assigns to us - on account of performance - the benefit of any claims against his supplier arising from the delivery of deficient merchandise or of such merchandise not conforming with the guaranteed characteristics. He will supply us with any documents necessary to enforce such claims.

#### **XI. Place of Performance, Jurisdiction, Severability Clause and Applicable Law**

1. The place of performance for the delivery shall be our warehouse.
2. Jurisdiction shall be at the location of our registered office or our branch office.
3. All legal relationships between ourselves and the Seller shall be governed by the laws of the Federal Republic of Germany supplementing these Purchase Conditions, including the provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (UNCITRAL).
4. Should individual provisions of the contract and these Conditions of Purchasing become ineffective, the effectivity of any other provision shall not be affected. Any ineffective provisions shall be reinterpreted in order to fulfil their intended financial purpose.

#### **XII. Applicable Version**

In cases of doubt, the German version of these General Conditions of Sale shall apply.

**ANCOFER STAHLHANDEL GMBH**

Mülheim an der Ruhr / Germany