

## **Terms of Delivery and Payment of SANHA Group Germany**

### **1. GENERAL**

- 1.1 Our Terms of Delivery and Payment are valid as of the given latest version and apply to all current and future orders from home and foreign ordering parties, other than we have explicitly accepted deviations in writing. Only our written confirmation relating to subsidiary agreements and subsequent changes are binding for us. This also applies to a revocation of the written form clause. The acceptance of our deliveries and services is considered to be an acceptance of our Terms of Delivery and Payment.
- 1.2 Possible purchasing terms of the contractual partner are only binding for us following our explicit written acceptance of these terms. The same applies to other general business terms of the contractual partner.
- 1.3 Agreements of the contractual partner with our salesmen, representatives and authorised persons are only binding for us after our written confirmation. Our visiting and authorised personnel, as well as our representatives, are only entitled to accept cash payments and cheques upon presentation of an authority to collect.
- 1.4 We are entitled to process data of ordering parties that are related to the given business relations in the sense of the legal regulations regarding data protection. In the event of data processing, the details of the respective processing are set out in Clause 11 of these General Terms of Sale and Delivery.

## **2. OFFERS AND THE CONCLUSION OF CONTRACTS**

- 2.1 Our offers are subject to their confirmation. A delivery agreement, or any other contract, is only effective when we have confirmed the client's order, or any other order, in writing or when we have delivered the merchandise.
- 2.2 We reserve the right to change the production process and product composition provided that this does not adversely affect the type and quality of the product.
- 2.3 In so far as no alternative has been agreed, details in text or pictorial form (e.g. descriptions, illustrations or drawings) published in catalogues, brochures and other publications closly define the nature, condition and use of the merchandise that we supply. The details are approximate values that are customary in the given line of business, other than they have been explicitly defined as binding in the order conformation. Other details of the manufacturer are not binding.
- 2.4 Excess and short deliveries within the customary extent are considered as agreed.

## **3. PRICES**

- 3.1 Invoicing will be based on the prices applicable on the delivery day if a fixed price has not been explicitly stipulated in writing.
- 3.2 In so far as no alternative provisions have been explicitly made, all prices are net prices without value-added tax which the contractual partner has to pay in the given legal amount, and they are applicable ex our production location without packaging. If no alternative details are furnished, prices are in the European currency (EURO).
- 3.3 We reserve the right to change prices if the basis for our calculations changes.

- 3.4 Granted discounts are cancelled in the event of default of payment of the contractual partner, if insolvency proceedings are filed for the assets of the contractual partner or if proceedings are rejected due to insufficiency of assets.

#### **4. DELIVERY**

- 4.1 Time for delivery commence with the date of our order confirmation, but not before all technical and commercial details have been unequivocally clarified. The delivery time is considered to have been fulfilled when the object has left our works or store prior to its expiry or if notification of dispatch readiness has been given if the merchandise cannot be dispatched in due time through no fault of ours.
- 4.2 In the event that we exceed deadlines and delivery times that are not explicitly defined as “fixed or “fix”” in the order confirmation, then the contractual partner may grant us a commensurate period of grace for the given delivery/service. Only with the expiry of this grace period will we be in default.
- 4.3 Notwithstanding our rights resulting from a default of payment by the contractual partner, periods of time and deadlines are extended by the same amount of time as the contractual partner fails to fulfil their obligations vis-à-vis us.
- 4.4 We are absolved of all obligations incurred in the given contract in the event of unforeseeable and exceptional circumstances which we do not have to justify, such as industrial disputes, operating disruptions, measures of authorities, transport disruptions and other cases of force majeure, irrespective of whether they arose with us or our suppliers. Obstacles of a temporary nature only prevail for the actual duration of the hindrance, plus a commensurate starting-up period. In the event that such events subsequently make the delivery impossible or unreasonable for one of the parties, then both parties will be entitled to withdraw from the contract.

- 4.5 Our liability for culpable delay attributable to slight negligence in breach of duty is herewith excluded other than the breach of duty results in injury to life, body or health. This provision is not associated with a change of the burden of proof to the detriment of the contractual partner.
- 4.6 We are entitled to effect partial deliveries provided that this can be reasonably expected of the contractual partner. Partial deliveries can be separately charged.
- 4.7. The return of properly delivered goods is principally excluded. If we exceptionally agree to the return of properly delivered goods, whereby our explicit written consent is necessary for a return, we are entitled to charge the contractual partner with a sum of 30 % of the net invoice value plus value-added tax for the goods concerned. This sum will be deducted from the credit note issued by us. The return of the goods must be freight-free ex our works.

## **5. INFORMATION AND CONSULTATIONS**

Information and consultations relating to our products are based on our past experiences and findings. The specified values are established average values. Information and consultations do not dispense with the need to test the suitability of the supplied merchandise and to observe processing instructions. Verbal details are not binding. Cipher 10 of these Terms is applicable in the event of possible liability.

## **6. DISPATCH AND PASSING OF RISK**

- 6.1 If not specified otherwise deliveries are effected ex works. In the event that one of the Incoterms have been agreed as a delivery term, then the version valid at the time the agreement was concluded is applicable.

- 6.2 If, at the request of the contractual partner, the merchandise is dispatched to a different location than the place of fulfilment, then the contractual partner will bear all arising costs. As an exception, the following shall apply: For orders concerning pipe-fittings with an order value of 500,-- € net and recipients with place of business in Germany, the goods will be delivered without charging freight and packing costs. As far as orders for pipes, wall heatings and deliveries to foreign countries are concerned, the relevant order values will be in each case notified by us separately. According to dutiful discretion we are free to decide the transport route and the transport company. Upon receipt of the merchandise, the contractual partner must immediately notify us in writing of the nature and extent of any transport damage. In case of deliveries ex works the merchandise will only be insured for transport damage, transport loss or breakage at the explicit request and expense of the contractual partner. Any costs incurred for express deliveries (express fees) shall be borne by the recipient.
- 6.3 Dispatch and transport of ex works deliveries are always effected at the risk of the contractual partner. This is also the case if deliveries are effected from a third party store (drop-off shipment) and for the return of merchandise and empties (transport of re-usable packaging). The risk, also with partial deliveries, passes to the contractual partner as soon as the consignment has been handed over to the person executing the transport operation or when, for the purpose of dispatch, the consignment has left our store or, with ex works deliveries, has left our works.
- 6.4 In the event that dispatch of merchandise is delayed for reasons which the contractual partner has to justify, or when the contractual partner is responsible for the transportation of the merchandise, then the passing of risk becomes effective when the contractual partner is given notification of dispatch readiness. The contractual partner bears the storage costs amounting to 0.5% of the invoiced total per month when the merchandise is stored in our works or store. We reserve the right to furnish proof of higher storage costs. Following the futile expiry of a commensurate period of grace, we shall be entitled to dispose of the

merchandise in an alternative manner and supply the contractual partner again within a commensurately extended period of grace.

- 6.5 The passing of risk for deliveries free domicile/store, and also partial deliveries, is transferred to the contractual partner as soon as the merchandise has arrived at their business premises/store ready for unloading. Unloading must be immediately carried out by the contractual partner who is obliged to provide an adequate number of workers and unloading facilities. We will charge for waiting times as is customary in this line of business. If transport to the destination fails for reasons which lie within the risk area of the contractual partner, then the risk associated with this transport passes to the contractual partner. This also applies to unjustified acceptance refusal by the contractual partner. Cipher 6.4 applies accordingly.

## **7. PAYMENT**

- 7.1 Payments must be effected in the accounting currency free of postage and expenses. Payments must only be made into the payment points specified by us. Bills of exchange and cheques will only be considered to have been accepted as payment after they have been honoured and without the obligation for on-time presentation and submitting an objection. If the accounting currency is not specified otherwise, payments must be effected in EURO (€).
- 7.2 If not specifically agreed otherwise, payments must be effected within 30 days of the invoice date without any deductions. In the event that this payment period is exceeded we shall be entitled to demand interest amount of 9 per cent above the basic interest rate p.a. (§ 247 BGB – *German Civil Code*).
- 7.3 The contractual partner can only offset counter-claims if these counter-claims are undisputed or legally binding. In the event of a defect, the contractual partner can withhold three-fold of the after-fulfilment amount. In exercising the retention right, the contractual partner must give us, according to our preference, security

for the unpaid amount either by way of a bank guarantee or a deposit with a notary of their choosing.

7.4 If payment is not effected in due time we can:-

7.4.1 Immediately assert from the ordering party all claims arising from the given or other business, even if they are not yet due;

7.4.2 Retain our deliveries and other services associated with the order in hand or other orders until the ordering party has completely fulfilled all our claims that are still open as a result of the order in hand or other orders;

7.4.3 Demand the provision of commensurate security;

7.4.4 Demand the return of the merchandise supplied by us and that is subject to our reservation of title. If, as a result of lapse of time, the merchandise is no longer usable, or only usable to a limited extent, we will then be entitled to demand value equalisation.

7.5 If, after a contract has been concluded, we become aware of facts relating to a significant deterioration of the financial status of the contractual partner which, after dutiful commercial discretion, could endanger our claim to counter-performance – especially if insolvency proceedings are filed – we can demand the provision of an appropriate security within a reasonable period until the moment in time we render our security, or demand a counter-performance for our service. We can withdraw from the contract or demand compensation if the contractual partner does not fulfil our justified demand in due time. In such a situation all amounts – also deferred amounts – become immediately due.

## **8. RESERVATION OF TITLE AND INDUSTRIAL PROPERTY RIGHTS**

8.1 All delivered merchandise remains our property until all owed remunerations, including all subsidiary claims, have been fully paid. If bills of exchange or

cheques are accepted, then payment is only considered to have been effected after they have been finally honoured. Subsidiary claims include the cost of packaging, freight and insurance, banking fees, dunning costs, the cost of legal advice and representation, court fees and other costs.

- 8.2 The contractual partner accepts the merchandise subject to reservation of title for safekeeping in conformity with commercial practice. The contractual partner is obliged to store the merchandise separately and identify it as belonging to us. We are entitled to check the separate storage and identification of the merchandise at short notice. If insolvency proceedings are filed for the assets of the contractual partner we shall be entitled to immediately identify the reserved merchandise as our own property and/or repossess the merchandise. The contractual partner is liable for the loss of our merchandise. The contractual partner must insure the merchandise against fire, water and theft at their expense and for our benefit. Insurance claims are herewith assigned to us in advance. We must be immediately notified of all arising damage.
- 8.3 Transformation and processing of the reserved merchandise are carried out on our behalf as manufacturer in the meaning of § 950 BGB (*German Civil Code*) without placing us under obligation. The processed merchandise is considered to be reserved property in the meaning of Cipher 8.1. In the event that the customer processes, combines and mixes the reserved merchandise with other goods, then we are entitled to co-ownership of the new object in the same ratio as the invoiced amount of the reserved merchandise in relation to the invoiced value of the other used goods. If our ownership becomes extinct due to combination or mixing, then the customer transfers already now their ownership rights to the new stock of objects to the same extent as the invoiced value of the reserved merchandise and will store it free of charge on our behalf. The co-ownership rights existing hereafter are applicable as reserved merchandise in the meaning of cipher 8.1.
- 8.4 The reserved merchandise can be sold, processed or combined with other objects, or extended in any other form (hereinafter referred to as "resell") by the contractual party only within the framework of orderly business operations and



provided that the contractual partner is not in default. Any other disposition of the reserved merchandise is impermissible. We must be immediately notified of third-party attachments or seizures of the reserved merchandise. All intervention costs, e.g. the cost of a third-party proceedings as per § 771 ZPO (*German Code of Civil Procedure*) must be borne by the contractual party in so far as they are not retracted by the third party (party opposing the proceedings) following the first request, and if intervention was justified. If the contractual party grants their buyer deferment of payment, then he must reserve ownership to the reserved merchandise under the same conditions as we have reserved ownership to the delivered reserved merchandise. However, the contractual partner is not obliged to reserve ownership vis-à-vis the buyer regarding the ownership to future arising demands. Otherwise the contractual partner is not entitled to resell.

- 8.5 The claims of the contractual partner resulting from the resale of the reserved merchandise are herewith assigned to us to the same extent as is needed to secure the reserved merchandise. The contractual partner is only entitled to resell if the resulting claims entitlement is assigned to us.
- 8.6 If the contractual partner sells the reserved merchandise together with other goods not supplied by us for a total price, then the claims for the sale will be assigned to us to the same extent as the invoice value of our sold reserved merchandise.
- 8.7 If the assigned claim is included in a running invoice, then the contractual partner herewith assigns to us already now a part of the balance, including the final balance from the current account, that equals this claim.
- 8.8 The contractual partner is entitled, until recalled, to collect the claims assigned to us. We are entitled to recall if the contractual party does not fulfil in an orderly manner their payment obligations resulting from the business relations with us or if we become aware of circumstances that could significantly diminish the credit worthiness of the contractual partner. If the preconditions exist to exercise the recall right, then the contractual partner must, at our request, immediately

disclose the assigned claims and their debtor, declare all the details that are necessary to collect the claims, hand over to us all the requisite documents, and notify the debtor of this assignment. We, ourselves, are also entitled to notify the debtor of this assignment.

- 8.9 If the nominal value (invoiced total for the merchandise or the nominal amount of the claim rights) of the securities existing for us exceeds the secured claims by more than 20%, we will then be obliged to release securities of our preference at the request of the contractual partner.
- 8.10 If we assert our reservation of title, then this will only represent a withdrawal of the contract if we specifically declare this in writing. The right of the contractual partner to hold the reserved merchandise becomes extinct if he does not fulfil his obligations result from this agreement or other contracts.
- 8.11 We reserve ownership and copyright to the illustrations, drawings, specimens and other documents. They must not be duplicated in any form, nor made available to others, without our written approval. They must be immediately returned to us at our request or if an order is not placed.
- 8.12 If third-party rights are infringed when products are produced according to specimens or other details of the contractual party, then the contractual party will immediately exempt us of all claims.
- 8.13 If we are not awarded the order we will then be entitled to demand commensurate reimbursement for the specimen products that we have produced.

## 9. WARRANTY

- 9.1 We are not liable for the incorrect or inappropriate use of the products.
- 9.2 The contractual partner is obliged to immediately carefully inspect the supplied merchandise upon receipt for completeness and conformity, even if specimens or samples were previously supplied. The delivery is considered to be approved if notice of any defects is not given in writing, by telefax or E-mail within 3 workdays of arrival of the merchandise at the point of destination or, if the defect was not immediately apparent in the course of an orderly inspection, within 3 workdays of its discovery. If notice of a defect in relation to an additional delivery is not given within 3 days of receipt of the merchandise at the point of destination, then it will be considered to have been approved. Our field staff is not entitled to accept notices of defect or incorrect quantities.
- 9.3 In the event that a notice of defect is justified, then the contractual partner will initially only be entitled to after-fulfilment which, according to our preference, can be the delivery of products that are free of defects (against return of the objected merchandise) or by remedying the defect.
- In the event that after-fulfilment fails or is unreasonable for the contractual partner (§ 440 BGB – *German Civil Code*) or superfluous because
- a. We have closingly rejected after-fulfilment;
  - b. We cannot complete after-fulfilment within the contractually stipulated time or a stipulated grace period and the continuation of performance interest of the contractual partner is linked to on-time rendition of performance;
  - c. When special circumstances exist which, when mutual interests are taken into account, justify immediate withdrawal (§ 323 Section 2, BGB – *German Civil Code*)
- then the contractual partner will immediately have the right to reduce the purchase price or, according to their preference, withdraw from the contract and demand compensation in place of the service, or demand replacement of futile expenditures in conformity with cipher 10.

- 9.4 The expenditures required for after-fulfilment, especial transport, travel, work and material costs, will be borne by us. This does not apply if the expenditures increase if the product has been relocated after delivery to a different location than the domicile or commercial residence of the contract partner, except if this relocation is in keeping with the intended purpose of use of the given object. The costs for transport and travel shall only be borne by us for transportation within the EU.
- 9.5 If the contractual partner accepts defective merchandise even though he has recognised the defect, then he can only be entitled to the claims and rights associated with defects if he has reserved these claims and rights when accepting the defective merchandise.
- 9.6 Assignment of claims of the contractual partner due to defects to third parties is excluded. Payments of the contractual partner in connection with notices of defect can only be retained to an extent that is commensurate with the asserted defect.

## **10. LIABILITY FOR DAMAGES**

- 10.1 We are liable for damage resulting from injury to life, body or health in conformity with the corresponding legal provisions.
- 10.2 Otherwise our liability is limited to breach of duty and our non-contractual liability to damage caused deliberately or by gross negligence. The liability for the gross negligence of our employees, collaborators and simple vicarious agents is excluded in this context, insofar as it is not a matter of gross negligence on the part of our executive employees.
- 10.3 The limitation on liability and the exclusion of liability according to Ciper 10.2 shall not apply in the event of breach of such contractual duties which make the due performance of the contract possible in the first place and adherence to

which the contracting party may rely on (i.e. cardinal duties or duties essential to the contract).

- 10.4 Liability is limited to contract-typical damage that we could have expected when the contract was concluded on account of the circumstances known to us at the given time.
- 10.5 Further damage, irrespective of the legal reason, is excluded. We are not liable for lack of commercial success, lost profit, indirect damage, consequential harm caused by a defect and damage resulting from third-party claims.
- 10.6 The above liability limitations apply equally to claims for compensation on account of futile expenditures (§ 284 BGB – *German Civil Code*).
- 10.7 Irrespective of the legal reason, compensation claims directed against us expire within two years of the legally stipulated commencement of the period of limitation, but at the latest after the surrender of the object.
- 10.8 The above provisions are not associated with a shift in the burden of proof to the disadvantage of the contractual partner.
- 10.9 Compensation claims according to the Product Liability Law (Produkthaftungsgesetz) remain unaffected.

## **11. DATA PRIVACY**

- 11.1 As far as we process personal data of natural persons of the contractual partner within the scope of the cooperation, we are responsible within the meaning of Art. 4 para. 8 GDPR and process this personal data on the basis of Art. 6 paragraph 1 letter f GDPR, our legitimate interest is the execution of the contract with the contractual partner, or if the contractual partner itself is a natural person, on the basis of Art. 6 paragraph 1 letter b GDPR.

This processing is contractually necessary, otherwise certain processing steps could not be carried out and the contract could not be properly fulfilled. We will only pass the data on to those recipients who necessarily support us in drafting and implementing the contract, in particular service provider in the IT/ITC sector and logistics companies. Personal data will only be stored by us for as long as it is necessary for the conclusion and execution of the contract or they have been stored due to legal retention periods or they may be kept for other legal reasons, in particular for legal defence. Articles 15-23 of the GDPR provide different rights for persons affected by data processing, in particular the right of access to personal data processed by the responsible, the right to correct inaccurate data, the right to delete personal data, the right to restrict processing, a right of objection to processing and the right to data transferability. Furthermore, concerned persons have a right of appeal to a supervisory authority with regard to data processing.

- 11.2 The contractual partner is responsible for and assures us that the personal data provided to us may be processed by us for the purposes described here. He will make the information presented here available to the persons concerned in a data protection compliant manner.

## **12. EXPORT CONTROL**

- 12.1 The contractual partner undertakes to comply with the current and applicable legal regulations in the area of export control, in particular the Foreign Trade Act, the Foreign Trade Ordinance, the War Weapons Act, the US EAR, the Chemical Weapons Convention as well as the EC, EU and Dual-Use Regulation and not to violate existing German EU, UN and US sanctions or resolutions or currently applicable embargo regulations.
- 12.2 In particular, the contractual partner is obliged not to sell, deliver, transfer or export the goods delivered by us, which fall within the scope of Article 12 g of Council Regulation (EU) No. 833/2014, either directly or indirectly to natural or

legal persons, organisations or institutions in Russia, for use in Russia or for carriage on board a ship under the Russian flag.

- 12.3 The contracting party shall use its best endeavours to ensure that the purpose of 12.2 is not frustrated by third parties in the further chain of trade, including potential resellers. For this purpose, the contracting party shall establish and maintain an appropriate monitoring mechanism to identify behaviour by third parties, including potential resellers, that could frustrate the purpose of 12.2 in the downstream trade chain.
- 12.4 Any breach of 12.2 and 12.3 shall constitute a breach of a fundamental contractual obligation.
- 12.5 In the event of a breach of one of the obligations regulated in 12.2 and 12.3, we shall be entitled to set the contractual partner a reasonable period of grace in order to terminate the breach of contract. If it is not possible from the outset to end the breach within a reasonable period of grace or if the grace period set expires without result, we may terminate the contractual relationship with the contractual partner and cancel all further contracts with the contractual partner. A legal right to extraordinary termination without setting a grace period remains unaffected, as does the right to claim damages.
- 12.6 The Contractual Partner shall inform us immediately of any violations of 12.2 and 12.3 of its own as well as of any violations by third parties, including possible resellers, in the downstream trade chain and shall provide us with further information immediately upon request.

### **13. PLACE OF FULFILMENT AND JURISDICTION, APPLICABLE LAW**

- 13.1 Place of fulfilment for all mutual obligations is the domicile of SANHA.
- 13.2 If the contractual partner is a businessman or a legal entity under public law in the meaning of § 29 a), Section 2 ZPO (*Code of Civil Procedure*), then the sole

place of jurisdiction for all disputes is the seat of our commercial register. We are also entitled to sue the contractual partner at their legal place of jurisdiction.

- 13.3 The relations between us and the contractual partner are subject to German law under the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the Rules of International Private Law. INCOTERMS apply to the interpretation of the contract.
- 13.4 In the event that individual provisions should prove to be ineffective or become ineffective due to subsequent circumstances, then this will not affect the effectiveness of the remaining provisions.