

# Terms and Conditions of Sales and Delivery of CABKA GmbH & Co. KG

2013-08-01

## 1. Object of Conditions, Range of Applicability

All deliveries made by Firm CABKA GmbH & Co. KG shall be exclusively subject to the following terms and conditions. They represent a constituent part of all offers made by CABKA and agreements entered into with CABKA. Should a long-term business relationship develop, this shall also apply to all future business. Other conditions of the purchaser shall only be valid if they are approved in writing by a person authorized to represent CABKA and listed in the register of companies. This shall also apply if CABKA has not expressly objected to the other terms and conditions or if the purchaser made reference to other terms and conditions in its order.

## 2. Conclusion of Agreement

- 2.1 All offers made by CABKA shall be subject to change. No agreement shall come into force prior to order confirmation or order fulfillment by CABKA.
- 2.2 All details given on items and objects under an agreement in catalogs, prospectuses, newsletters, advertisements, illustrations and price lists, etc. shall merely be considered descriptions, designations or reference values unless stated otherwise in the order confirmation. Items are sold subject to minor changes as compared to catalogs, etc., or vis-a-vis products delivered in the past.
- 2.3 Supplementary agreements or any change of these terms and conditions shall require the written form.

## 3. Scope of Supply and Services

The exact scope of supply and services is shown in the order confirmation by CABKA.

## 4. Frustration of Contract

- 4.1 If, following the conclusion of the agreement, circumstances have changed dramatically or unforeseen events are affecting the production or procurement of the item to be delivered, such as force majeure, in particular mobilization, war, riots, boycotts or plant shutdowns, strikes and shutouts, government interventions, energy supply problems, difficulties in the procurement of materials, CABKA shall be authorized to demand a corresponding modification of the agreement or to withdraw from the agreement to its sole discretion.
- 4.2 The purchaser is aware of the fact that CABKA products are manufactured to the greatest extent from recycled raw materials, in particular from material collected by Duales System Deutschland. In the event that the legal basis for establishing and operating Duales System Deutschland should no longer exist, particularly if notices of assessment issued by the Bundesländer are retracted in full or essential parts thereof, thus depriving Cabka of sufficient quantities of raw materials, Cabka shall be entitled to withdraw from the agreement. The same shall apply in the event that recycled PVC is no longer available on the market in sufficient quantities or only against extra payment.
- 4.3 If, following the conclusion of the agreement, the compensation right of CABKA appears to be in jeopardy, CABKA may demand payment in advance or withdraw from the agreement. In this case, any and all of CABKA's claims shall be satisfied by the purchaser without delay and in full, irrespective of the credit periods agreed on.
- 4.4 If, following the conclusion of the agreement, wages and/or material costs should increase by anything more than a small fraction, CABKA may adequately adjust the supply price and, if the purchaser refuses to accept the supply price increase, withdraw from the agreement.

## 5. Prices, Terms of Payment, Delay in Payment, Offsetting

- 5.1 Prices shown in the order confirmation only refer to the items to be delivered shipped from the CABKA plant exclusive of packaging and transport costs. The purchaser, in particular, shall bear the costs for transport insurance. If the purchaser has special demands with regard to packaging these shall be separately agreed on individually and in writing.
- 5.2 All prices listed are net prices plus any applicable VAT at the time of delivery.
- 5.3 Payment shall become due on the shipping date. CABKA shall be entitled to charge interest in the amount of 8 % above the base interest rate as of the 31st calendar day after the due date. The right to a higher default claim shall remain unaffected.  
If the purchaser defaults in payment, even in case of part payment, any and all of CABKA's claims against the purchaser shall immediately become due upon commencement of default. In the event of default by the purchaser, CABKA shall furthermore be entitled to forbid the use of the items delivered and repossess them at any time without waiving its claim for damages and without the purchaser being able to take civil nuisance action. If CABKA should claim reservation of ownership or if CABKA should repossess the items delivered, this shall only be considered a withdrawal from the agreement if CABKA expressly declares its withdrawal in writing. Any costs connected with the removal of goods shall be at the purchaser's expense. Moreover, irrespective of the purchaser's financial obligation, CABKA shall be entitled to sell repossessed goods, either at its sole discretion or through public auction. The proceeds shall be credited to the purchaser. If CABKA should withdraw from the agreement, the purchaser shall compensate CABKA, in addition to payments due for its use of the product, for any depreciation, even through no fault of its own, as well as the total damage, including lost profits. CABKA may demand 10 % of the selling price undocmented as lost profits.
- 5.4 If CABKA should be forced to take legal action, whether out of court or in a court of law, against the purchaser outside the Federal



Republic of Germany to assert its con-tractual claims, the purchaser shall be under obligation to assume all out-of-court fees and court costs, plus lawyer's fees, which would have to be reimbursed in compliance with German substantive or procedural law. Any purchaser with headquarters outside the Federal Republic of Germany shall accept these conditions upon contract award.

- 5.5 The purchaser may only offset against or justify any retention by undisputed or legally binding demands.
- 5.6 If payment on an installment basis is agreed on and the purchaser defaults on even part of an installment, the balance shall immediately become due in full.

## 6. Delivery Periods, Default

Delivery periods are always approximate and non-binding. Their commencement requires prior clarification of all technical issues, timely and complete accomplishment of the purchaser's cooperation duties, as well as compliance with the terms of pay-ment, also in respect of other orders. If these requirements are not met, the periods shall be extended accordingly, but at least by the period of the delay. CABKA shall not be responsible for unforeseen difficulties in the procurement of material, workers, transportation and energy, tool breakage, force majeure, in particular, mobilization, war, riots, boycotts, strikes and shutouts. If, upon commencement of default, the pur-chaser sets CABKA an adequate extension it shall have the right to withdraw from the agreement after this time period has expired or to claim damages instead of the sup-ply or services, if the default is the result of gross negligence or deliberate intent on the part of CABKA. § 286, sec. 2, BGB [German Civil Code], shall not apply. The purchaser shall have no further claims.

## 7. Products Provided

Products sent in will be processed without checking for errors. The same shall apply to tools furnished. CABKA will not be respon-sible for any claims or losses arising there from. This shall also apply to any defects discovered at a later date which can be at-tributed to the actual products or tools furnished or which are due to the fact that the products or tools furnished later prove to be incompatible or only poorly compatible with CABKA's production methods.

If there are no processing specifications processing will be at CABKA's sole discretion without CABKA accepting any liability.

## 8. Delivery

- 8.1 Delivery will be ex works, storage facility or any other of CABKA's locations without transport insurance. The shipping risk shall pass to the purchaser even if delivery has been agreed FOB destination or shipment is made on CABKA-owned vehicles. Mode of transport shall be determined by CABKA.
- 8.2 If the purchaser does not accept the product within 8 working days of the notice of availability of the product, or if the purchaser fails to inform CABKA of the dispatch address within this period, or if no calls are forthcoming in case of blanket purchase agreements, CABKA shall be entitled to demand immediate repayment of its ac-counts receivable as well as storage fees to an adequate extent. CABKA shall also be entitled to withdraw from the agreement. In the event of call orders without fixed de-livery times, the product shall be accepted not later than three months after order confirmation.

## 9. Reservation of Ownership

- 9.1 CABKA will retain ownership of the product delivered to the purchaser until such time as it receives payment in full of all claims ex-isting at the time of delivery under the business connection between CABKA and the purchaser or arising later under the contractual relationship, if payment is made by check or note until such time as these are redeemed. The inclusion of individual claims into a current invoice and net bal-ancing as well as their recognition shall not affect the reservation of ownership.
- 9.2 The purchaser shall be entitled to sell the goods that are subject to the reservation of ownership in the usual course of business. It shall not be entitled, however, to pledge, transfer or assign them as security. None other than the purchaser himself shall be ob-ligated to secure the rights of CABKA as a conditional seller in case of a resale of re-served goods on credit terms. The purchaser shall assign the purchaser's own claims arising from the resale of reserved goods to CABKA in advance; CABKA shall accept this as-ignment. Notwithstanding the assignment and CABKA's collection rights, the purchaser shall be entitled to collect for as long as it meets its obligations to CABKA and CABKA's compensation rights are not placed in jeopardy. At the request of CABKA the purchaser shall provide the required details on the claims assigned re-quired for collection and show indicate the assignment to its debtors. The purchaser shall treat or process the reserved goods for CABKA without any obliga-tion arising for CABKA therefrom. In the event that reserved goods are processed, combined, blended and mixed with other goods not belonging to CABKA, CABKA shall be entitled to the resulting co-ownership share in the new product, directly pro-portionate to the delivery value of the reserved goods in relation to the other pro-cessed product at the time of processing, combining, blending or mixing. If the pur-chaser acquires sole ownership of the new product, an agreement exists with CABKA that the purchaser shall grant CABKA co-ownership of the new product directly pro-portionate to the delivery value of the reserved goods processed or combined, blended or mixed and store them on behalf of CABKA without charge. If the reserved goods are resold along with other products, irrespective of whether with or without process-ing, combining, blending or mixing, the assignment in advance shall be limited to the delivery value of the reserved goods.
- 9.3 If the value of the securities exceeds CABKA's claims by more than 20 %, CABKA will release securities at the purchaser's request at its sole discretion to the extent deemed necessary.
- 9.4 The purchaser shall advise CABKA without delay of executions by third parties against reserved goods or claims assigned in advance and submit any documentation nec-essary for an intervention to CABKA.
- 9.5 As soon as he has stopped payments or a request to open insolvency proceedings against its assets has been filed, the buyer is under obligation to furnish the seller a list of the remaining reserved goods, to include quantities processed, and a list of claims against

garnishees along with copies of the invoices without delay. The purchaser shall grant the seller irrevocable access rights, enforceable at all times, to all storage rooms to take stock and possibly identify the seller's products.

- 9.6 Moreover, the purchaser is under obligation to take out adequate insurance against all risks of accidental loss, destruction or deterioration for goods in our sole or co-ownership. The insurance cover shall be documented to CABKA upon request.
- 9.7 In the event of default on the part of the purchaser or a serious violation of due care and diligence, exercising the reservation of ownership clause by CABKA shall not be considered a withdrawal from the agreement, unless CABKA expressly announces its withdrawal.

#### **10. Duty of Inspection, Notification and Rejection**

- 10.1 The purchaser shall inspect delivered goods immediately after delivery, in particular with regard to completeness. Shortfall or excess quantities of more than 10 % of the quantity agreed on and defects shall be documented to CABKA by registered letter without delay.
- 10.2 Defects not ascertainable as part of the standard inspection must be indicated to CABKA within 7 working days of their detection in compliance with the above-mentioned inspection, notification and rejection requirements. Any violation of the duty of inspection, notification and rejection, shall void any warranties with regard to the defect in question. § 377, HGB [German Commercial Code], shall apply addition-ally.
- 10.3 Damage in transit shall be documented by the forwarding agent on the spot and shall also be settled with the forwarding agent. CABKA will not be under any liability whatsoever.

#### **11. Defects**

- 11.1 CABKA manufactures products of recycled plastics and recycled mixed plastics. The-se materials are not pure. They contain all kinds of different plastic components and other compromising substances. In spite of permanent quality control, particularly the mechanical characteristics of recycle processed are subject to great fluctuation, caused by the changing composition of the basic material. This also applies to the varying concentrations of foreign matter (metallic inclusions, unmelted technical plas-tics, etc.) which can be blamed for inconsistencies regarding the individual weight and color of the products. The purchaser is aware of these fluctuations and expressly accepts them. These unusual features of the raw material are not considered to be defects. Thus, models and samples with the purchaser can only be regarded as sam-ples of appearance and workmanship.
- 11.2 Non-acceptance of deviations customary in the trade requires an express written agreement. The same applies to any warranties. Minor, insignificant deviations of the item to be delivered, especially with regard to dimensions and color, from prod-uct samples, catalogs, prospectuses and price lists, etc. or previously delivered goods shall not be considered defects. The purchaser shall check personally whether or not the ordered product is suitable for the use intended by it. Unsuitable goods shall only be considered unsat-isfactory if CABKA has confirmed suitability to the purchaser in writing. Wear and tear on consumable parts in the context of normal utilization shall not represent a defect.
- 11.3 CABKA shall be entitled to deliver excess or shortfall quantities up to 10 % of the or-dered product.
- 11.4 If installation, mounting, distribution, user or maintenance instructions are not followed, changes made on the items delivered, parts replaced or substances or cleaners or care products used that are not compliant with the manufacturer's requirements, claims due to defects shall exist only if the purchaser furnishes proof that the defect was not caused by any of the above but had already existed upon the transfer of risk.
- 11.5 The provision of a duly justified and proper notice of defects for any newly-made item that has not yet been delivered to the customer shall place CABKA under obligation, at CABKA's option, to either remedy the defects by subsequent rectification or substi-tute delivery of the delivery item or parts thereof. If substitute deliveries or rectification attempts should fail, the purchaser may only demand a reduction of the price or withdraw from the agreement at the purchaser's option. The right of withdrawal and any claim for damages to substitute for supply and services as per section 12 of these provisions shall only be valid provided that the defect is not insignificant.
- 11.6 If a newly-made item has already been delivered to the customer, the purchaser shall be strictly and exclusively limited to pursue only those claims due to defects against CABKA which its customer is pursuing against it. This shall not apply if the purchaser has assumed an obligation towards its customer as a courtesy not coordinated with CABKA. The purchaser shall not be entitled to with-drawal from the agreement with CABKA if it had to take back the product due to its failure to properly meet its obliga-tion to provide supplementary performance, in particular because it culpably al-lowed a period set for supplementary performance to expire.
- 11.7 CABKA shall only be under obligation to reimburse expenses in compliance with § 439 sec. 2 BGB, provided that the purchaser has furnished CABKA prior written notification of the customer's request for supplementary performance without delay, advised CABKA of the intended manner of supplementary performance as well as the corre-sponding approximate costs, and CABKA has not promptly voiced an objection. The purchaser shall be expected to include suggestions made by CABKA toward a more favorable variant of the supplementary performance in its considerations.
- 11.8 Warranty claims for used items delivered shall be ruled out except where covered by a specific guarantee, or in case of fraudulent intent, or if otherwise agreed on.
- 11.9 If CABKA should fail to meet any non-performance related obligations in compliance with § 241 sec. 2 BGB, the purchaser shall be entitled to the right of withdrawal and a claim for damages to substitute for supply and services over and above the principal legal stipulations only if the purchaser has previously sent CABKA a written warning and the breach is nevertheless not desisted from.
- 11.10 Claims due to defects for newly-made items delivered shall lapse at the end of one year. §§ 444 and 479 BGB shall otherwise remain unaffected.

11.11 If no defect can be ascertained during an inspection following a notice of defects by the purchaser, the purchaser shall assume the defect detection costs.

## **12. Limitation of Liability, Damages**

- 12.1 § 444 BGB, claims for damages due to injury to life, body and health as well as claims as stipulated in the Product Liability Act shall remain unaffected by the limitations of liability provided hereinafter.
- 12.2 If CABKA has negligently failed to meet an obligation essential for the fulfillment of the contract purpose, the liability shall be limited to damages typical for comparable business transactions of this kind foreseeable at the conclusion of the agreement or not later than at the time when the breach of duty occurred.
- 12.3 Other claims for damages shall be ruled out.  
In particular, CABKA shall neither be liable for damages sustained by the delivery items proper nor for any kind of consequential damages caused by defect, nor shall CABKA be liable for lost profit or other economic losses of the purchaser.  
The preceding Limitation of Liability shall be void if CABKA or his vicarious agents have acted with deliberate intent or gross negligence.
- 12.4 Further-reaching warranty and damage claims on the part of the purchaser than those named in these terms and conditions shall be ruled out, irrespective of type and legal reasoning used.
- 12.5 The preceding Limitation of Liability shall likewise apply to tort claims on the part of the purchaser.
- 12.6 The liability of CABKA's vicarious agents shall be subject to the same limitations.

## **13. Statute of Limitations**

Unless provided otherwise in these terms and conditions, the limitation period for claims against CABKA not resulting from intentional acts on the part of CABKA is one year.

## **14. Final Clauses**

- 14.1 To perform its obligations CABKA may employ the services of third parties.
- 14.2 German law shall govern, the United Nations Convention on Contracts for the International Sale of Goods shall not apply. The contract language is German.
- 14.3 The purchaser shall consent to CABKA's storing and processing of personal data without being notified thereof in each individual case.
- 14.3 If one of these provisions, whether in full or in part, should be or become invalid or not feasible, it shall be replaced by such provision as comes closest to the intended meaning and purpose of the agreement. This shall not affect the overall validity of the remaining provisions.
- 14.4 CABKA's domicile or, at CABKA's option, the purchaser's place of residence shall be the sole place of jurisdiction in business relationships with registered traders and legal entities under public law or public separate estates for all disputes arising from the legal relations existing between CABKA and the purchaser.
- 14.5 Unless provided otherwise in the order confirmation, the place of performance shall be CABKA's domicile.