

## General Terms and Conditions of Sales and Delivery

(Version July 2009)

### 1. General - scope

- 1.1. These General Terms and Conditions of Sales and Delivery will apply to all offers, (purchase) agreements, deliveries and activities of Greiner. With placement of the order or at the latest upon receipt of the products the buyer acknowledges these General Terms and Conditions of Sales and Delivery.
- 1.2. These General Terms and Conditions of Sales and Delivery shall apply for the entire duration of the business relationship, i.e. for subsequent transactions as well. These General Terms and Conditions of Sales and Delivery need only be provided once.
- 1.3. Delivery is made and services are carried out by Greiner only on the basis of the following General Terms and Conditions of Sales and Delivery, if the parties do not agree otherwise in writing. Any and all terms and conditions – including those of the contract partner –, if not explicitly accepted by Greiner in writing, are not binding for Greiner, even if Greiner does not expressly reject them.
- 1.4. In the event any provision of the General Terms and Conditions of Sales and Delivery shall be held to be entirely or part wise invalid, the validity of the remaining provisions of the General Terms and Conditions of Sales and Delivery and the General Terms and Conditions of Sales and Delivery as such shall remain unaltered in force.

### 2. Closing the Contract, Offers

- 2.1. Our offers are only binding when they are submitted in writing and when they are explicitly specified as binding.
- 2.2. The conclusion of the contract becomes effective upon our written confirmation of an order or upon otherwise expressly confirmed in writing.
- 2.3. No variation or purported variation of a term of this or any contract shall bind Greiner unless first agreed in writing.
- 2.4. For the purpose of these General Terms and Conditions of Sales and Delivery the term “in writing” includes also all communication between the parties by means of email or telefax.
- 2.5. Our delivery certificate and/or our final invoice are also valid as order confirmation.
- 2.6. Illustrations, drawings, specifications of dimensions and weight, which form the basis of the offer or order confirmation, shall as a rule only be seen as approximate values, insofar as they are not exclusively designated to be binding.

### 3. Dispatch and Packaging

- 3.1. Unless agreed otherwise, we deliver our products unpacked ex warehouse or ex works (Incoterms version 2000 ex works) inclusive packaging exclusive other dispatch costs or costs of shipment. In cases of our aid for loading the buyer must relieve us from any responsibility or liability.
- 3.2. Insurance will be taken out only if this is the buyer's express wish. We function solely as an agent under exclusion of all responsibility or liability.

### 4. Delivery Period and Acceptance

- 4.1. In the absence to the agreement to the contrary, the period of delivery begins at the latest of the following moments:
  - a) date of the order confirmation
  - b) Date of fulfilment of all technical, commercial and financial requirements on the part of the buyer
  - c) The date on which we received the down payment of the products and/or a letter of credit to our benefit has been opened.
- 4.2. Delivery dates given in our order confirmation and/or written correspondence are estimated delivery dates and nonbinding otherwise confirmed by us in writing.
- 4.2. The deadline is met when the articles are declared to be ready for delivery or when the delivery item has left the factory before the delivery period ends. If and in so far the goods fail to be dispatched at the agreed time for reasons not attributable to us, the agreed delivery time shall be considered to have been met at the day on which the goods are notified to be ready for dispatch.
- 4.3. Partial deliveries are allowed.
- 4.4. In the event that we or our suppliers are hindered through an act of god we are entitled to extend the delivery date by an appropriate period. The same shall apply in the event of government intervention, shortages of energy or raw materials, delays in delivery of components supplied by or on behalf of the buyer, strikes, lockouts, lack of means of transportation and other unforeseen

supply problems, insofar as they are beyond our control. We shall inform the buyer without delay and ensure that any inconvenience for the buyer is kept to a minimum, if necessary by releasing the moulds, tools and devices for the duration of the hindrance.

## **5. Prices and Conditions of Payment**

- 5.1. Prices are ex-works inclusive packaging and exclusive other shipping and transport expenses if not otherwise agreed in written form. One-way packaging cannot be returned. All prices are nett and unless expressly agreed otherwise in the currency EURO plus the respective statutory value-added tax.
- 5.2. The price for the moulds shall also cover the costs of sampling but neither the costs of testing and processing equipments nor modifications determined by the buyer.
- 5.3. Pallets and transport packaging shall be replaced or invoiced separately at cost price.
- 5.4. The price includes the ARA license fee for our transport packaging. Any other release from responsibility/duty through Greiner does not take place.
- 5.5. Payments have to be made according to the agreed payment conditions. Unless otherwise agreed, our invoices are due to be paid according to the date of invoice and the payment has to be made without deductions to our bank account within 30 days after the date of invoice. Deduction of discounts require a special agreement. Payments are deemed to have been made at the time in which they are received in our business account.
- 5.6. Discount agreement will be completely negated as soon as a default in payment occurs (also in the case of partial payments) and/or if all other due payments have not been made by the time of receipt of the discounted invoice amount, at the latest.
- 5.7. The purchaser has the right to counter demands only in the case of indisputable or legally determined demands.
- 5.8. Complaints which have not been integrally closed are no cause for a delay in payment.

## **6. Components supplied by or on behalf of the Buyer**

- 6.1. If the buyer is obliged to supply components and/or packaging for the manufacturing and delivery of the goods ordered, he must deliver these components DDU respective Greiner factory plus a 5 to 10 % additional quantity for scrap or increased production in perfect condition and in volumes allowing process continuity, free delivered to our factory, in time for the manufacturing process.
- 6.2. Notice of defect of the components will be made from us immediately, as soon as the defect is in evidence within a normal course of business. The buyer shall waive the objection of a late notification of defects.
- 6.3. In case of delayed or deficient delivery or defective quality of such components/packaging, the buyer must indemnify us for our additional costs and expenses as well as hold us harmless for damages and losses incurred by such delay, deficiency or defectiveness. In these events, we are entitled at our discretion to interrupt the manufacturing process until receipt of components in proper form and adequate quantity. In this cases the buyer is obliged to compensate our additional costs. Other consequences of delay remain unaffected.

## **7. Preparatory Work, Lithographic Prints, Tools**

- 7.1. Any preparatory work, such as sketches, drafts, estimation of costs, originals, samples etc. prepared by us will be invoiced separately if no orders are placed. Such preparatory work as well as brochures, catalogues, presentations or the like remains our property. Any usage in particular transmission, copying, publication and provision inclusive copying in extract requires our explicit approval.
- 7.2. Final drawings, lithographic prints, clichés, impression cylinders, punching, injection and special tools etc. shall remain our property even full payment has been received. Unless instructed otherwise, they shall remain in our possession after full payment has been received and kept for repeat orders for 2 years. If no additional orders are received within that period of time, we will dispose of the items at our own discretion. Any claims of the buyer concerning these components expire at the latest at that time.

## **8. Protected rights**

- 8.1. Where workpieces are manufactured according to the ideas, proposals, models, drawings or samples of the buyer, the buyer gives a guarantee that no protected rights of third parties are infringed thereby. In any legal proceedings in connection with claims for compensation of infringement of patent rights, trademark rights, protection of designs, trade secrets or proceedings

protected by copyright within the construction or the manufacture the buyer will release the supplier from all claims of third parties and resulting costs and will participate in legal proceedings if the supplier asks him to do so.

- 8.2. Irrespective of the existence of legal protection rights all ideas, inventions, designs and samples, works protected by copyright, patents, design right, trademarks, copy rights and trade secrets and all knowhow or other intellectual property made by us, and all techniques applied by us to manufacture and design of the goods, preliminary to or upon processing of an order shall always remain sole intellectual property of us.

## **9. Notice of Defects**

- 9.1. A warranty claim shall be subject to the proviso that the buyer has given commercially reasonable written notice of the defects that have occurred within 8 working days after the delivery of the products for apparent defects or 8 days after detecting a latent defect of the product by including a specific description of the nature of the defect. At our request the buyer is obliged to send samples of the defective products back to us.
- 9.2. If Products are produced based on drafts, or drawings of the buyer or us, our warranty shall be limited to the fact that it has been designed in accordance with the written agreed instructions or in accordance with the pattern released by the buyer. In this cases warranty for the efficiency/operability and warranty of fitness of the products for the specified usage mentioned by the buyer shall be excluded.
- 9.3. Any disputes between buyer and us about quality, delivery or any other complaint submitted by buyer shall not give buyer the right to suspend payment.
- 9.4. Returning the defective goods, except samples of defective goods required by us, is not admitted without our prior written approval. In case goods should nevertheless be returned all resulting costs, caused to us, are to be reimbursed. Acceptance of the returned goods does not grant buyer any claims or other legal consequences. Also our examination of the defect does not entitle buyer to any claims or legal consequences. The risk for the usability of the goods for a certain purpose or in a certain way is borne by buyer unless we have made a different written promise. For claims resulting of such written promises the provisions of article 8.4 and article 9. of this General Terms and Conditions of Sales and Delivery shall be applicable and in force.
- 9.5. If components are used, which we buy in behalf of the buyer or which are supplied by the buyer, the buyer is obliged in cases when defects of the components appear at first to approach the producer of these components. We herewith assign our warranty claims concerning these components to the buyer. When a defect of the component appears the buyer has to inform us immediately. We will forward to the buyer the name and the address of the producer of this component. In cases the buyer is a merchant we are allowed to demand that the buyer at first juridical claim against the producer of the components, provided that a juridical action is not unreasonable and provided that the juridical action against the producer of the components are not due to lack of funds factual worthless. Failure of juridical action or if due to lack of funds of the producer of the components a juridical action is unreasonable for the buyer, the buyer is entitled to assert a warranty claim subject to article 9.1 till 9.4.

## **10. Warranty and Liability**

- 10.1. The warranty period shall be 6 months after delivery of the products. The assumption of § 924 sentence 2, ABGB [General Austrian Civil Code] shall not apply.
- 10.2. For any claim raised and accepted – whereas for quality and construction the pattern which was released from the buyer is decisive, when such pattern exist- we will either reduce the price or replace the effective products or return the purchase price, whichever is preferable to us.
- 10.3. We are only liable subject to mandatory law, currently for act of gross negligence and intent. Other claims of whatever nature, under whatever title, in particular, claims for compensation of indirect damage or consequential damages, lost profit or several losses, which arise by the buyer or a third party are expressly excluded. In cases the buyer is claimed by third parties the buyer will hold us harmless against these claims.

## **11. Product Liability**

- 11.1. Relevant claims against us for compensation, by the contract or third parties under the heading "product liability" in accord with the product liability law, are excluded, unless those entitled to compensation prove that the fault was caused within our sphere of responsibility, and that it was at least caused by serious negligence.

## **12. Reservation of Ownership**

- 12.1. Until the full discharge of all financial obligations including interest and costs of the buyer towards us, we reserve the right of ownership to the goods we supply. The buyer may further process or re-sell the goods, which are subject to retention of title by us, in the normal course of business; provided, however, that pledging or protective conveyance of the goods may only be made upon prior written approval from us. Our retention of title shall also extend to such products as may result from further processing of the goods. By processing, mixing or reconstructing the joint product with other products, not our property, we gain shared ownership of the resultant product in proportion of the monetary value of the joint product and other component products at the time of processing. It is the duty of the buyer to store and control the resultant product with appropriate care.
- 12.2. The buyer hereby assigns to us now, in the event of resale, all debts including all ancillary rights and collateral security, accruing to him in respect of his buyers from the resale of the purchased goods, and we hereby accept the assignment. The buyer, upon demand, shall disclose to us the names and addresses of his buyers as well as the accounts receivable and amounts due resulting from such sales. Unless revoked by us and without prejudice to our sole title in the assigned receivables, the buyer may collect the receivables assigned to us in his own name, but for our account.

## **13. Legal Succession and Assignment**

Orders are binding for the legal successor of the buyer or the seller. The rights and obligations as determined in the Agreement and these General Terms and Conditions may not be assigned by either the buyer or us without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The above mentioned will not apply in case of assignment by the buyer or us to its legal successor(s). Such an assignment will be valid upon the notification of other party in writing (including telefax and e-mail).

## **14. Place of Fulfilment, Applicable law**

- 14.1. The place of performance is agreed to be the place of the Greiner factory which delivers the products, even when the transfer of the products is carried out at another place.
- 14.2. Place of jurisdiction for all disputes arising out or in connection with a contract or agreement is at our option the appropriate court with jurisdiction for the respective Greiner factory or the registered business address of the buyer.
- 14.3. These General Terms and Conditions of Sales and Delivery and all contracts and agreements shall be governed by and interpreted in accordance with the material law of the respective Greiner factory. The application of the 1980 Vienna Convention on the International Sale of Goods is herewith excluded.

## **15. Arbitration**

All disputes arising out of or in connection with this General Terms and Conditions of Sales and Delivery or a contract or agreement shall, if the buyer's registered seat is outside of the European Union and nothing in the contrary is agreed in written form, finally settled according to the Rules of arbitration of the International Chamber of Commerce (Paris) by one or more arbitrator(s) appointed with the said Rules. The Place of arbitration shall be Vienna, Austria. The arbitration court shall decide subject to Austrian material law excluding the 1980 Vienna Convention on the International Sale of Goods.

## **16. Salvatorius Clause**

- 16.1. In the event that one of the provisions should, for whatever reason, be void or invalid, this shall not affect the validity of the other provisions.
- 16.2. The contracting parties undertake to replace the invalid regulation with a valid one which comes closest to the economic intent of the invalid regulation.