

TERMS AND CONDITIONS OF SALE

The following Terms and Conditions of Sale (the "Terms") are applicable to the provision of all goods supplied and/or services rendered ("goods") by Ferro GmbH, Frankfurt am Main, Germany ("Seller"), to any purchaser, or in the case of sample products or material, recipient, thereof ("Buyer").

1. **GENERALLY** - Seller's offer for sale of goods and Buyer's acceptance of any such offer is governed exclusively by these Terms unless otherwise agreed in writing, signed by a duly authorized director or employee of Seller. If an order is deemed to be an offer by Buyer, Seller's acceptance of such offer is expressly conditioned on Buyer's assent to these Terms. Any additional, different, or conflicting terms proposed by Buyer in any offer, acceptance, confirmation (including any Buyer purchase order or specifications) or otherwise, (a) are requests for material alterations to these Terms, (b) are hereby rejected and objected to by Seller, and (c) will not be binding in any way on Seller.

2. **PRICE; PAYMENT** - The goods are hereby offered for sale at prices and terms to be established by Seller and specified on Seller's invoice, order confirmation, acknowledgment or otherwise agreed to by the parties in writing. Prices are quoted nett. Buyer will pay for all goods on a nett thirty (30) day basis. The price does not include costs of packaging, insurance and freight. All orders are subject to credit approval by Seller. Seller reserves the right to withhold shipment or to require other adequate assurances of performance of Buyer's payment obligations (including prepayment and security amounting to the purchase price) as Seller in its discretion may require, notwithstanding any order confirmation issued by Seller. This request shall be made in writing. If Buyer does not pay the prepayment or security within due time after such request, Seller has the right to rescind the agreement forthwith.

3. **TAXES** - Seller's price for goods is exclusive of any Value Added Tax (VAT), Federal, state, or local sales, use, or excise taxes levied upon, or measured by, the sale, the sales price, or use of goods required in the performance of any order. Seller will list separately on its invoice any such taxes applicable to any such goods or transaction, and payable by Buyer, with respect to which Buyer does not furnish to Seller evidence of exemption.

4. **DELIVERIES** - Seller will use commercially reasonable efforts to meet the delivery dates, specifications, and quantities as set forth in Buyer's purchase order. The date of delivery shall in every case be stated by Seller as an approximation and shall not be a firm agreement upon delivery date ("Fixgeschäft"). If an agreed upon delivery date is not met by Seller, Buyer has to set in writing a reasonable deadline for final delivery ("Nachfrist"). Seller will not, however, be liable for damages or delays in delivery due to causes beyond its reasonable control. Any damage claim shall be limited as set forth under Clause 9 hereunder.

Dispatch, Deliveries: Place of delivery is our production plant or warehouse.

Unless otherwise agreed in writing and notwithstanding the above, all goods are dispatched at the risk of Buyer. Seller reserves the right to select the carrier and the routing. Partial deliveries are permitted.

Transport Insurance: Seller is authorized to cover appropriate transport insurance on behalf and on account of the Buyer in an amount at least equal to the invoiced value of the goods.

Damage, Deficiencies or Loss: No claim for damage, deficiencies or loss will be considered unless notice in writing is given both to the Seller and the Carrier within the following limits:

- i) Damage to a consignment or part thereof - within 3 days of receipt.
- ii) Non-delivery of the total consignment - within 3 days of receipt of the remainder of the consignment.
- iii) Non-delivery of the total consignment - within 10 days of date of advice or dispatch.

The buyers failure to give notice of any claim for damage, deficient receipt or loss in accordance with above provisions shall constitute an unqualified acceptance of the goods forming such consignment and a waiver by the Buyer of all claims in connection therewith.

5. **PRODUCT WARRANTIES** - Seller warrants to Buyer that at the time of delivery Seller will have good title to all goods supplied to Buyer and the right to convey title to such goods to Buyer free and clear of all liens. Seller further warrants to Buyer, to the best of its knowledge, that all such goods will conform to the specifications, drawings, samples, or other description furnished or specified by Seller or agreed to in writing by Seller, and will be free from defects in material and workmanship. Buyer will not be relieved of its obligation to verify the suitability of our products and processes for the use or application intended by him. Seller reserves the right to make technical modifications in the course of its product development. Seller further warrants that any services it provides hereunder will be performed in a workmanlike manner. In the event of justified claims relating to the quality of the goods delivered, Seller reserves the right to either replace or repair the goods. If repair fails to remedy the defects, or the replacement goods are defective, Purchaser shall be entitled in its discretion, to either make a setoff from the purchase price or to rescind the contract. Damage claims relating to non-conforming products are subject to the limitations set forth under Clause 9 hereunder.

The warranties stated in this Clause 5 are the only representations and warranties Seller has given Buyer in connection with the provision of goods to Buyer. Except as set forth in this Clause 5, Seller has not made and hereby expressly disclaims any other or further representation or warranty, either express or implied, concerning the goods. THE WARRANTIES GIVEN IN THIS CLAUSE 5 ARE IN LIEU OF ALL OTHER WARRANTIES SELLER MIGHT HAVE GIVEN BUYER, INCLUDING WARRANTIES OF MERCHANTABILITY AND WARRANTIES OF FITNESS FOR INTENDED USE. Subject to Clause 9 hereunder, all other warranties Seller or anyone purporting to represent Seller may have given, or which may be provided or implied by law or commercial practice, ARE HEREBY EXCLUDED.

5a. **TOOLS AND MODELS** - Tools and models remain property of Seller even if Buyer pays for them totally or partially.

5b. **RETENTION OF TITLE** - The goods sold shall remain property of Seller until all claims arising out of our business relationship with Buyer have been satisfied, but the risk in the goods and all liability to third parties in respect thereof shall pass to the Buyer on delivery. If the goods have been processed or finished by Buyer, our title shall extend to the new finished product, but not to any waste streams from the processing or finishing.

If the goods have been processed, combined or mixed by Buyer with goods of Buyer or third parties, Seller shall acquire joint title pro rata, to that part of the goods that represents the invoiced value of our goods in relation to the total value of the other goods which have been processed, combined or mixed.

In the event goods from Seller are combined or mixed with main goods ("Hauptsachen") of Buyer or of any third party, Buyer hereby assigns its rights to Seller with regard to the new products. If Buyer combines or mixes goods from Seller with main goods of a third party for compensation, Buyer hereby assigns to Seller its right to compensation from such third party.

Buyer may, in the ordinary course of his business, resell any goods which are subject to Seller's retention of title. If, upon such resale, Buyer does not receive the full purchase price in advance or upon delivery of such goods, he shall agree with his customer a retention of title in accordance with these conditions. The Buyer hereby assigns to Seller all his claims arising from such resale and his rights arising from the said agreement for retention of title. If so requested by Seller, the Buyer shall advise his customer of such assignment of rights and shall provide Seller with the information and documents necessary to enforce Seller's rights. Notwithstanding the foregoing, Buyer shall only be entitled to collect payments from claims from such resale to any third party as long as Buyer properly satisfies his obligations to Seller.

In the event that the security interests granted to Seller exceed by more than 10 percent the value of Seller's claims arising out of our business relationship with Buyer, Seller shall, upon written request, be obligated to release security interests in excess of said limitation.

6. **NON-CONFORMING GOODS** - Upon Buyer's receipt of shipment, Buyer shall immediately inspect the goods. Unless Buyer provides Seller and Carrier with written notice of any claim for shortage, damage, defect or nonconformity in the goods within five (5) days after receipt of shipment, such goods shall be deemed finally inspected, checked and accepted by Buyer and Buyer's failure to provide such notice shall be deemed to constitute a waiver of any such claim, provided the non-conformity was patent.

7. TRADE COMPLIANCE

(a) **EXPORT CONTROL REGULATIONS** - The goods that are the subject of this document and related technology are subject to export and re-export restrictions under U.S. and other countries' export control regulations, including without limitation the U.S. Export Administration Regulations, regulations of the U.S. Office of Foreign Asset Control and comparable laws and regulations of other countries, which may require U.S. or other government approval for any re-export or retransfer ("Export Control Regulations"). Buyer warrants that it (i) will adhere to and comply with (x) all applicable Export Control Regulations and (y) any applicable terms, conditions, procedures and documentation requirements made known to Buyer that may be promulgated by Seller from time-to-time to comply with the Export Control Regulations; (ii) will not, directly or indirectly through a third party, ship Seller materials to the Crimea region of Ukraine, Cuba, Iran, North Korea, Syria, Sudan or any other country subject to trade embargoes in violation of Export Control Laws. Buyer acknowledges that Seller will not proceed with a shipment when Seller knows that the Seller products in that shipment are destined for a sanctioned country. Buyer represents that neither Buyer nor any of its principals, officers, or directors, or any person or entity known to Buyer to be directly involved in this transaction as freight forwarder, customer, end-user, consultant, agent or otherwise is designated on any of the U.S. government restricted parties lists, including without limitation the U.S. Commerce Department Bureau of Industry and Security Denied Persons List, Entity List or Unverified List, the U.S. Treasury Department Office of Foreign Asset Controls Specially Designated National and Blocked Persons List or the U.S. State Department Directorate of Defense Trade Controls Debarred Parties List or restricted parties lists of any country having jurisdiction over Buyer or the transaction involving the goods that are the subject of this document or related technology.

(b) **ANTIBOYCOTT PROVISIONS** - Buyer will not request of Seller information or documentation where the purpose of such request is to support, give effect to or comply with a boycott of any country in contravention of the laws or policies of the United States, including but not limited to the Arab League boycott of Israel. Seller hereby rejects any such request by Buyer and will report receipt of any such request to the relevant U.S. government office, as required by law.

(c) **ANTICORRUPTION/ANTIBRIBERY** - In relation to any transaction involving the goods that are the subject of this document or related technology, Buyer shall not seek to obtain or retain business or gain any other advantage by making or offering to make any payment of money or by providing or offering to provide anything of value, directly or indirectly, to: (i) any government official; or (ii) any non-governmental person, in either case with the intent that such official or person will perform their responsibilities improperly. Buyer warrants that it will comply with the anticorruption laws and anti-bribery laws of any country having jurisdiction over Buyer or the transaction involving the goods that are the subject of this document or related technology, and will in all cases comply with the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act.

(d) **NONCOMPLIANCE** - In the event that Seller reasonably believes that any provision of this Clause 7 has or may have been breached, Buyer shall cooperate fully with Seller's investigation to clear the matter and Seller shall not be obligated to sell or provide goods or technology or take any other act in furtherance of any transaction or agreement while such investigation is pending and such suspension or forbearance by Seller shall not constitute breach of any obligation in respect of the transaction to which this document applies or otherwise.

8. **Purchaser's Remedies** - Purchaser's rights with respect to non-conforming goods SHALL BE LIMITED TO the rights set forth under Clause 5 above. At Seller's request, Buyer WILL PERMIT SELLER OR ITS DESIGNEE TO INSPECT ANY ALLEGEDLY DEFECTIVE GOODS INCLUDING SHIPMENT OF SUCH ALLEGEDLY DEFECTIVE GOODS TO THE LOCATION SPECIFIED BY SELLER AT SELLER'S COST.

9. **LIMITATION OF LIABILITY**: Seller can only be held liable for indemnification, on whatever legal grounds, up to the amount of Euro 50,000,00 in any individual case, and up to the amount of 500,000,00 Euro for the aggregate of all damages caused by Seller to Buyer in a calendar year. This applies in all cases of normal negligence ("leichte Fahrlässigkeit") and

in case negligence is based on a legal presumption only.

This limitation of liability shall not apply,

- (a) in all cases of bad faith ("Arglist" und "Vorsatz") or gross negligence ("grobe Fahrlässigkeit") on Seller's part, or on the part of Seller's legal representatives or employees, or
- (b) if the breached provision of the contract is essential for the performance of the contract, or
- (c) if express warranties ("Zugesicherte Eigenschaften") or guarantees are not met and the purpose of the warranty or guarantee was the protection of Purchaser against the kind of injuries suffered,
- (d) for personal injury or damage to private property under Seller's country product liability laws or on any other grounds for mandatory liability under the Seller's country law.

10. INDEMNITY - Buyer shall indemnify, defend and hold Seller and its directors, officers, employees, agents, suppliers, parents, affiliates, subsidiaries, successors and assigns harmless from and against any and all fines, penalties, suits, actions, claims, liabilities, judgments, losses, damages, costs and expenses (including attorneys' fees) resulting or arising from (a) Buyer's negligence or willful misconduct, (b) Buyer's use, sale, handling, storage, or disposal of the goods or any product or waste derived therefrom, (c) Buyer's discharge or release of the goods or any product or waste derived therefrom into water, onto land or into the air, (d) Buyer's exposing any person (including Buyer's employees) to the goods or any product or waste derived therefrom, including failure to warn of such exposure, or (e) the transportation of the goods to Buyer after tender of the goods by Seller to the carrier at Seller's shipping point. The foregoing shall apply, without limitation, to injury to person (including death) or damage or harm to property or the environment. This indemnity shall not apply to any fine, penalty, suit, action, claim, liability, judgment, cost or expense caused solely by Seller's negligence or willful misconduct, but shall apply where there is concurrent negligence or willful misconduct on the part of Seller and Buyer in proportion to Buyer's negligence or willful misconduct.

11. FORCE MAJEURE - Except for the payment of monies owed, neither party will have any liability for any breach or failure to perform that is the result of an event, condition or circumstance beyond that parties' reasonable control, including, without limitation, acts of God, war, insurrection, or terrorism, fire, inclement weather, strikes, boycotts, or other similar circumstances. If a party becomes aware of any such event, condition or circumstance, then such party will promptly advise the other party and both parties will cooperate to ameliorate the circumstance or condition as quickly as possible.

12. STATEMENT OF ACCOUNTS AND PAYMENTS - Buyer shall verify the correctness and completeness of statements of account, in particular balance confirmations, as well as invoices, notes, and settlements of accounts. Objections to statements of account shall be given in writing within one month from the date of the respective statement. Any other objections shall be made without undue delay. Failure to make timely objections shall constitute approval.

Buyer shall be under the obligation to pay invoices sent with relation to the goods within the period stated on the invoices. If no payment is made or payment is not made on time, Seller can charge interest from the date payment should have been made until the date payment is made in full. The rate of interest shall be equal to the Statutory Interest Rate ("Basiszinssatz") plus eight percent. All payments made by Buyer shall be allocated first to the reduction of interest and then to the reduction of principal.

13. GOVERNING LAW - The sale of goods hereunder shall be governed, interpreted and construed by and in accordance with German law, without regard to the conflict of laws provisions thereof, and expressly excluding the United Nations Convention on Contracts for the International Sale of Goods. The exclusive place of jurisdiction for both parties shall be Frankfurt am Main, Germany and the parties hereto do hereby irrevocably submit to such jurisdiction and venue, and waive any objection to the contrary hereafter.

14. TRADE TERMS - If trade terms have been agreed originating from the International Chamber of Commerce (INCOTERMS), the INCOTERMS as set forth in its latest version under www.iccwbo.org/incoterms/preambles.asp shall apply.

15. SEVERABILITY - Should any of these provisions be deemed wholly or partially invalid, this shall not affect the validity of the remaining provisions.

16. SELLER GROUP: Seller shall be entitled to carry out this contract in whole or in part through one or more of the business enterprises of the Seller group of companies, who shall be authorized to act on our behalf, even though Seller continues to be Buyer's contracting party.

17. COMPLIANCE WITH LAWS. Buyer shall comply with all applicable laws, regulations, and other legal requirements regarding the export, import, sale, distribution, marketing, and service of the goods and related technology, including without limitation, tax and foreign exchange legislation or regulations and the obligations under Clause 7.

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