General Terms and Conditions of Business of Grömo GmbH & Co. KG, valid from March 1, 2011

1. General

1.1. In business dealings between ourselves and our customers, the present General Terms and Conditions of Business shall be deemed exclusively agreed, this also applying to future orders.

1.2. Deviating conditions in order documents from our customers are hereby expressly contested.

1.3. Deviating agreements and side-agreements shall only be valid in individual cases if they have been confirmed by us in writing. Validity of the remaining General Terms and Conditions of Business shall remain unaffected.

1.4. All statements in brochures, catalogues, lists, quotations, websites etc., in particular on dimensions, weights, illustrations, have only been determined approximately or are approximations customary in the trade and are therefore always non-binding.

1.5. The use of our trademarks, brand designations and logos or illustrations and portrayals of Grömo products in the internet, world wide web or in other electronic or digital communication networks, by television or radio transmission and also in print media shall require our express prior consent.

1.6. Our General Terms and Conditions of Business shall exclusively apply towards businesses, public law entities or public law funds in the sense of § 310 sub-section 1 German Civil Code.

2. Conclusion of contract, data

2.1. The purchase contract shall only validly originate by dispatch of the order confirmation by us. Delivery of the goods or transmission of the invoice shall be equated to dispatch of the order confirmation.

2.2. To the extent that Customer has provided personal data to us, the data necessary for handling business shall be recorded, processed, stored and forwarded within the framework of handling the order to affiliated companies and, if necessary, to partner companies and also to service companies.

3. Prices and conditions

3.1. The prices of the current price list at the time shall apply. When a new price list appears, the previous lists shall lose their validity.

3.2. All prices shall apply "ex works".

3.3. Our prices shall be exclusive of statutory value added tax. The latter shall be stated separately on the invoice to the statutory amount on the date of invoicing.

4. Delivery, delivery period

4.1. Statements about the delivery period shall be non-binding to the extent that the delivery time has not been assured bindingly as an exception. If a delivery period has been agreed bindingly, it shall be extended for a suitable period in the event of force majeure. Force majeure of any kind, unforeseen disturbances of operation, transport or dispatch, fire damage, floods, unforeseen industrial disputes, unforeseen quantities of workforce, energy, raw material or ancillary materials, strikes, lock-outs, official orders or all other incidents for which we are not answerable and which reduce, delay, prevent or make manufacture, dispatch, acceptances or consumption unreasonable, shall release from the obligation to delivery or acceptance for the duration and the scope of the disturbance. If delivery and/or acceptance is exceeded by more than eight weeks as a result of the disturbance, both parties shall be entitled to withdraw from the contract.

4.2. Urgent deliveries shall only be made by express request of Customer, to whom the costs shall be charged. This shall also apply to other kinds of dispatch expressly desired by Customer.

4.3. We deliver with a net order value:
– from EUR 1,500.– franco domicile without charging the packaging,
– below EUR 1,500.– we charge freight and packaging costs.

4.4. Possible subsequent deliveries shall be franco domicile without charging the packaging.

4.5. Following provision to the dispatch agent, all consignments shall travel for Customer's account and at its risk.

4.6. We reserve the right to make deliveries to customers not known to us by cash on delivery to start with. We shall be entitled to part deliveries.

5. Warranty, guarantee, liability, returns

5.1. We warrant careful processing of flawless raw materials. Complaints on account of recognisable defects, incorrect deliveries or considerable deviations in quantity are to be notified to us without delay, albeit no later than ten days after delivery of the goods. Hidden defects shall be notified to us without delay after discovery. If Customer fails to notify defects within said period, the products shall be deemed approved free of errors. The decisive thing for the contractual condition of the goods shall be the time of passage of risk pursuant to Section 4.5.

5.2. We warrant functionality matching the state of the art for five years following delivery. Damage as a result of normal wear and tear, improper treatment or use, use for an improper purpose, faulty assembly or repairs has been excluded from warranty. The same shall apply to defects only inconsiderably reducing the value or the usefulness of the goods.

5.3. If defects are notified justifiably and in good time, we shall provide after-working or replacement delivery at our choice. The right to demand reduction of remuneration or cancellation of the contract for the event of failure of after-working or replacement delivery shall remain reserved for Customer.

5.4. We shall be liable according to statutory provisions to the extent that Customer claims damages based on malice aforethought or gross negligence, including malice aforethought or gross negligence of our representatives or vicarious agents. To the extent that we are not charged with deliberate breach of contract, liability for damages shall be limited to the foreseeable damage typically occurring.

5.5. We shall be liable according to statutory provisions to the extent that we culpably breach a cardinal contractual duty: in such a case, however, the liability for damages shall be limited to the foreseeable damage typically occurring.

5.6. Liability for culpable injury to life, limb or health shall remain unaffected; this shall also apply to mandatory liability according to the Product Liability Act.

5.7. In any case, returns shall be agreed with us beforehand for the purpose of unproblematic handling. Returns by freight forward and those not announced or agreed beforehand shall not be accepted.

6. Payments

6.1. As a matter of principle, payments shall be made as follows:
– payment within 10 days of date of invoice with 2% discount
– within 30 days of date of invoice without deduction.
– For invoices under EUR 80.–, discounts cannot be granted.
– Discount is only granted under the prerequisite that previous Grömo invoices have been settled.

6.2. Payments with bills and/or cheques shall be accepted by way of performance subject to honouring. Acceptance of bills shall only be following prior agreement and if the costs of the bill, including discount and fees, are remunerated completely in cash and the papers are re-discountable.

6.3. Offset by Customer shall only be possible with undisputed or legally effective claims or those ready for a decision. A right of retention from previous or other business in the ongoing business relationship has been ruled out. If payment periods are exceeded, we shall be entitled to charge default interest to an amount of 8% above the basic rate of interest at the time according to § 247 German Civil Code.

7. Retention of title

7.1. We reserve title to the object of purchase until receipt of all payments from the business relationship between Grömo GmbH & Co. KG and Customer. In the event of payment by bill by Customer, further separate agreements shall be made thereon.

7.2. Customer shall be entitled to sell the conditional commodities in the ordinary course of business as long as it complies with its duties from the business relationship with us in good time. However, it may not pledge or transfer the goods by way of security. In stoppages of payment, non-honouring of cheques or bills, application for or opening of insolvency proceedings or extra-judicial composition proceedings, the right to resale, to use or to integration of the contractual commodities and the authorisation to collect the assigned claims shall expire.

7.3. In conduct in breach of contract by Customer, in particular arrears in payment, we shall be entitled to take the object of payment back, which shall represent withdrawal from the contract. After taking the object of purchase back, we shall be entitled to exploitation, the yield from which shall be offset against Customer's liabilities - less suitable costs of exploitation.

7.4. All claims and rights from the sale of goods to which rights of retention accrue to us are here and now assigned to us by Customer as security. We hereby accept the assignment.

7.5. In seizures or other interventions by third parties, Customer shall notify us in writing without delay so that we can initiate proceedings pursuant to § 771 Code of Civil Proceedings. To the extent that the third party is not in a position to reimburse the judicial and extra-judicial costs of initiation of proceedings pursuant to § 771 Code of Civil Proceedings to us, Customer shall be liable for the losses suffered by us.

7.6. We engage to release the collateral accruing to us according to the above provisions at Customer's request to the extent that the realisable value of our collateral exceeds the claims to be secured by more than 10%; the selection of the securities to be released shall be a matter for us.

8. Place of performance, place of jurisdiction, severability

8.1. Place of performance for all duties from the contractual relationship shall be Marktoberdorf.

8.2. Place of jurisdiction for all legal disputes from the contractual relationship shall be the Court competent for Marktoberdorf to the extent that Customer is a businessman.

8.3. The law of the Federal Republic of Germany shall prevail; applicability of UN purchase law has been ruled out.

8.4. If individual provisions of the present terms and conditions of business or the delivery transaction are or become ineffective, the validity of the remaining provisions shall not be affected. An ineffective provision shall be replaced by a valid and admissible one matching the purpose and sense of the obsolete provision to the greatest extent.

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