

## General Terms and Conditions of Business (GTC) of Membrapor AG

### **§1. Area of Validity, differing Terms of Conditions**

These General Terms of Conditions shall apply to every sale (product or service) made or agreed to be made by Membrapor Ltd. (hereinafter being referred to as Membrapor) . No order given by the Buyer shall constitute an agreement for sale until accepted by Membrapor under these Conditions whether by Membrapor's form of acknowledgement of the Buyer's order or by the despatch of the Goods in pursuance thereof. Any conditions differing from these GTC submitted, proposed or stipulated by the Buyer in whatever form, whether written or oral, are expressly waived and excluded.

No change to these Conditions shall be binding unless agreed in writing by Membrapor.

The German original version is valid, other versions are merely informative.

### **§2. Prices and Payments**

1. The buyer owes the value of the goods at the CHF prices applicable on the date of order receipt. All taxes, duties or other charges are to be borne by the buyer. Membrapor reserves the right to charge additional packaging costs. Unless explicitly mentioned, all freight and transportation costs are to be paid by the buyer.
2. If the payment is agreed to be made in a currency other than CHF, the invoice amount shall be calculated on the basis of the exchange rate by the date of invoicing.
3. Payment shall be made by bank transfer to the bank account listed on the invoice. Neither cash nor checks or credit cards will be accepted.

### **§3. Order placement**

1. Price offers made by Membrapor are non-binding unless they are expressly confirmed.
2. Orders placed by the Buyer are not legally binding unless confirmed in writing by Membrapor and not objected by the Buyer within 3 working days. Membrapor's written Order Confirmation is legally binding.

### **§4. Delivery**

1. Membrapor's legal obligation to deliver the ordered Goods is subject to its own supply of the relevant raw materials and components. Membrapor shall immediately inform the Buyer in case its own supply is cancelled or delayed. Membrapor shall be entitled to cancel the order in case of missing raw materials or components supply and shall reimburse any advance payments made by the Buyer without delay.
2. Part deliveries are admissible and may be invoiced immediately after shipment.
3. Delivery times mentioned in offers and orders are non-binding.

4. In case binding delivery dates have been stipulated between Membrapor and the Buyer, §9. shall apply in case of Force Majeure.

Compliance to the agreed delivery time is subject to fulfilment of the stipulated contractual obligations by the Buyer, particularly due prepayments or agreed securities. Membrapor reserves the right to object to unfulfilled contracts.

5. Membrapor's indications of type and size of packaging shall be non-binding. Type of packaging and way of dispatching shall be defined by Membrapor, based on the relative requirements. No packaging material whatsoever shall be taken back or recovered by Membrapor.

6. Shipment of ordered Goods shall occur according to Incoterms 2010 for the account and risk of the Buyer. Membrapor is entitled to choose the forwarding agent as well as the means of transport.

7. Membrapor shall not be obliged to insure the shipped Goods against any risk.

## **§5. Suitability of the Goods**

The Buyer shall ensure the suitability of the ordered Goods for the foreseen application.

The Goods supplied by Membrapor comply to the specifications given in the current Specification Sheet and are based on Membrapor's test methods.

The Buyer is solely responsible for the fulfilment of all laws, regulations and norms concerning the goods supplied by Membrapor.

The Buyer undertakes not to modify the products, their primary packaging or labels manufactured and/or supplied by Membrapor. Exceptions are exclusively permitted with the express and written consent of Membrapor.

## **§6. Warranty, Complaints, Warranty, Liability and Return of Damaged Goods**

1. Unless otherwise specified by Membrapor in writing, all products manufactured by Membrapor are subject to a warranty of 12 months from the date of dispatch against defects in workmanship, materials and construction. The warranty and liability shall expire prematurely, should the client or third parties not use and/or operate the product in compliance with Membrapor's operating instructions and recommendations.

2. The Buyer shall inspect the Goods upon arrival and report immediately defects and deviations of the delivered Goods in writing to Membrapor.

Any defect the Buyer may only discover at a later point in time, shall immediately and not later than 12 months after date of dispatch be reported in writing to Membrapor. Claims made to forwarding agents or third parties shall not be recognized by Membrapor.

3. Defects which are not reported according to §6.1. and §6.2. shall not be considered by Membrapor and shall not be covered by the warranty.

4. Any justified defect, properly reported to Membrapor shall grant the Buyer the following rights:

(a) As far as a defect of quality or title is claimed, Membrapor reserves the right to remedy the defect, issue a credit note or to replace the defective by conforming Goods.

Membrapor shall have the right to suspend remedies or replacement of defective Goods in case of overdue payments.

(b) Only if a remedy or replacement of the defective Goods fails, shall the Buyer be entitled to withdraw from the contract or to request a partial reimbursement of the amount paid.

The remedy or replacement of the defective Goods is regarded as failed after the second unsuccessful attempt if nothing to the contrary emerges from a particular situation.

In case of legitimate remedy or replacement of defective Goods takes place, §4 applies for delivery times.

5. Defective or faulty Goods may only be returned to Membrapor with written consent and according to the instructions of Membrapor.

6. Membrapor shall not recognize claims of products used in applications which it has not tested and approved. It is the Buyer's responsibility to make any necessary investigations and tests to ascertain the concrete applicability of the products for the intended application.

7. Membrapor shall not be liable for any loss, damage, or expense directly or indirectly related to or arising out of the use of its products, including damage or injury caused to other products, instruments, buildings, or property, and Membrapor shall not be liable for consequential damages, including, without limitation, lost profits, loss of time, inconvenience, loss of an order.

## **§7. Duty of notification of the Buyer**

1. The Buyer shall be obliged to notify Membrapor of particular risks of which it becomes aware and which result from the use of the Goods delivered.

2. It is the responsibility of the Buyer to ensure that the Goods comply with any legal requirement for whatever application the Goods are used. Specific attention is brought to the labelling and disposal of the Goods.

3. It is the responsibility of the Buyer to provide comprehensive information concerning application of the products and any dangers that may result thereof to its customers.

## **§8. Payment terms**

1. The Buyer shall pay the purchase price within the prescribed period and without any deduction.

2. If the Buyer is responsible for late payment of the purchase price, default interest of 1% per month based on the invoice amount must be paid.

3. A retention of payment or offset due to any existing counter-claims of the Buyer is excluded, with the exception of undisputed claims or claims which have been recognised by declaratory judgement.

4. All claims from Membrapor issuing from the business relationship with the Buyer,

regardless of the legal relationship, are due immediately when circumstances have been established which, legally or following contractual agreements, give Membrapor the right to withdraw.

5. All charges deriving from the transfer of the amount due (bank charges, duties etc.) shall be borne in full by the Buyer.

## **§9. Force majeure**

1. Neither party shall be fully liable for the failure to perform its contractual obligations if non-fulfilment is due to force majeure, particularly to the following reasons:

- fire
- natural disasters
- war
- requisition
- raw materials shortage
- restriction of energy consumption
- strike

or if own supplies are prevented by such events. This rule applies to all contractual duties including all liabilities.

2. Each party is entitled to terminate the contract by notice in writing, if performance is being prevented for more than 6 months according to no. §9. 1.

## **§10. reservation of ownership**

1. Until full payment of the purchase price, including all incidental receivables, and until payment of all other receivables arising from the business relationship, the goods delivered shall remain Membrapor's property.

The customer shall only be entitled to dispose of the Goods which are subject to the retention of ownership, in whatever form, within the normal course of business. On no account, however, may the Goods be assigned to third parties as a security in the ordinary course of business.

2. In case of Goods sale within regular business dealings the paid purchase price takes place of Goods. The Buyer herewith agrees to assign to Membrapor all claims for payment arising out of any such sale. The Buyer is authorised to collect these outstanding amounts provided that he has satisfied his payment obligations in respect of Membrapor. Under consideration of the extended reservation of property rights (advance cession of the purchase price claim), any cession to third parties, in particular banks, shall be inadmissible. Membrapor shall be entitled to inspect the sales documents of the customer at any time and to inform the customer's own customer of the assignment.

3. Where the Buyer's claim for payment from the resale has been received in a current account, the Buyer herewith also assigns to Membrapor his claim for payment from his customer from the current account. This transfer shall correspond to the amount which Membrapor charged for the reserved Goods which have now been resold.

4. Although Membrapor might claim for his rights for retention of title, the Buyer still remains in duty to fulfil the obligations of the contract. The value of the Goods at the

time of taking back shall be only credited to the existing claim.

## **§11. Right of withdrawal**

If performance is prevented for more than two months, the Buyer as well as Membrapor shall be entitled to withdraw from the contract in respect of the service that has not been performed. Neither party may rescind the contract before this period of time has elapsed for any of the aforesaid reasons for delay.

Membrapor shall be entitled to withdraw from the contract for the following reasons:

(a) If the Buyer is not creditworthy which was not known while signing the contract and the Buyer does not agree on a prepayment.

(b) If the goods subject to the supplier's retention of ownership are disposed of other than in the regular course of business of the purchaser, in particular through transfer by way of security or pledge. Exceptions to these cases are admissible only to the extent that the supplier has given his written consent to the disposal.

(c) If Membrapor has a legal right of withdrawal.

## **§12. Place of Performance and Jurisdiction**

1. Where the Buyer is a businessman or legal entity governed by public law or has separate assets governed by public law, the office of Membrapor (Wallisellen, CH) will be the exclusive place of jurisdiction for all disputes arising directly or indirectly from this contract relationship.

The place of performance for all claims arising from the contract concluded between the Buyer and Membrapor shall be the place of the office of Membrapor in Wallisellen (CH).

2. If individual provisions of this contract are or become invalid in full or in part, this shall not affect the remaining provisions of the contract; the same shall also apply if it occurs that the contract has a loophole.

A fully or partially ineffective provision is replaced or an unintended omission in the contract is filled by an appropriate provision which, as far as is legally possible, comes closest to what the contractual parties intended or, given the sense and purpose of this contract, would have intended if they had considered the matter.

3. In any case, including but not limited to international deliveries, this contract shall be governed by the Swiss Federal law.

The law of the United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11.04.1980 applies secondarily for foreign transactions.