

## **General terms of delivery of Monier Roofing Components GmbH**

### **§ 1 Applicability**

(1) All deliveries, services and offers of Monier Roofing Components GmbH (the "Seller") shall be based exclusively on these terms of delivery. These form an integral part of all contracts being concluded between the Seller and its contractual partners (the "Customer") in regards to its deliveries or services offered. They shall also apply to all future deliveries, services or offers to the Customer, even if they are not agreed separately. These terms of delivery shall not apply to end consumers (*Verbraucher*).

(2) The general terms and conditions of the Customer or third parties do not apply, even if the Seller has not explicitly objected to their applicability in individual cases. Even if the Seller has referenced a certain document which contains the general terms and conditions of the Customer or a third party, or if they refer to these, this does not represent a consent to the applicability of such general terms and conditions.

### **§ 2 Offer and conclusion of contract**

(1) All offers of the Seller are subject to change and are non-binding, unless they have been marked expressly as being binding, or if they contain a fixed acceptance deadline. Orders or demands may be accepted by the Seller within fourteen days of receipt.

(2) The sole decisive document for the legal relationship between the Seller and the Customer shall be the agreed purchase contract (the "Contract"), which includes these terms of delivery. It reflects all agreements made between the parties regarding their contractual relationship. All additional commitments made by the Seller orally before concluding this agreement are not legally binding. Oral arrangements between the parties shall be replaced immediately by an agreement in writing, unless it can be concluded explicitly that it is the parties' intention that such oral arrangements shall continue to apply.

(3) All amendments and changes, including these terms of delivery, shall require the written form to be effective. With the exception of managing directors or authorized officers, the Seller's employees shall not be entitled to make oral agreements with the Customer differing from the Contract and the terms of delivery. In order to comply with the written form requirement, electronic communications shall be sufficient, i.e. by fax or email, as long as a signed copy is attached.

(4) Any statements made by the Seller in respect of the ordered goods or services to be provided (such as weight, dimensions, utility values, tolerances and technical data) as well as depictions of the same (such as drawings and images) shall be regarded as approximately only, as long as the utilization for the contractually intended purpose does not require an exact conformity with the agreed specifications. These statements do not constitute guaranteed conditions (*garantierte Beschaffenheit*) of the ordered goods, but descriptions or labeling information in regard to the delivery or the service. Any trade-related deviations, or deviations due to legal requirements, or deviations which represent technical improvements, as well as the replacement of components by means of equal parts, shall be valid, as long as the utilization in connection with the contractually intended purpose is not impacted thereby.

(5) The Seller shall retain ownership or copyright of all its offers and cost estimates submitted to the Customer, as well as in regards to all its drawings, images, calculations, brochures, catalogues, models, tools and other documents and equipment made available to the Customer. The Customer may not make these items available to third parties neither as such nor with regard to their content, nor allow any access by third parties to them; the Customer shall neither publish them, utilize them nor have them utilized by third parties nor distribute them without the explicit consent of the Seller. Upon the Seller's request, the Customer shall return all items as well as destroy any copies of them if they are no longer needed in the ordinary course of business, or if the negotiations do not result in the conclusion of a Contract.

### **§ 3 Prices and payment**

(1) The prices listed in the order confirmation shall apply to all services and deliveries of the Seller. Additional or individual services shall be invoiced separately. All prices are calculated ex works and in EUROS and include non-reusable packaging but are without any

VAT or custom duties, fees and other public charges, in case of export deliveries.

(2) In case the parties have agreed on Seller's list prices, the current list prices of the Seller at the time of delivery shall apply (minus an agreed percentage or fixed discount) .

(3) Unless agreed otherwise in writing, all invoices are due within fourteen days without any deductions. The decisive factor with regard to the date of payment shall be the full receipt of payment by the Seller. Payments by check are not accepted. If the Customer fails to make payment in due time, an interest rate of 5% p.a. is charged to the outstanding amounts counted upon the due date. In case of default of the Customer an interest rate of 8% p.a. above the respective basic interest rate will be charged. The claiming of higher default damages is reserved.

(4) The offsetting with any Customer's counter-claims or the withholding of payments due to such claims shall be valid only if the counter-claims are undisputed or confirmed in a legally binding manner.

(5) In case the Seller, after conclusion of the Contract, becomes aware of circumstances which could significantly reduce the Customer's credit-worthiness and which might put at risk the Customer's payment of the Seller's open claims in connection with the respective contractual relationship (including other individual orders to which the same framework contract applies), the Seller may, at its discretion, carry out or fulfill open deliveries or services against pre-payments or provisions of security only.

### **§ 4 Deliveries and delivery dates**

(1) Deliveries shall be made ex works.

(2) Any deadlines or dates indicated by the Seller regarding deliveries and services are made approximately only, unless a fixed deadline or date has been explicitly stated or agreed. If shipment has been agreed, the delivery deadlines and delivery dates shall refer to the date of handing over the ordered goods to the carrier, freight handler or any third parties nominated for the transport.

(3) The Seller may – irrespective of his rights in case of Customer's default – ask for an extension of the delivery and service deadlines set by the Customer, or ask to postpone the delivery and service deadlines by the same amount of time in which the Customer has failed to meet its contractual obligations towards the Seller.

(4) The Seller shall not be liable regarding the impossibility of a delivery or for any delivery delays, if these were caused due to force majeure or other events which could not be foreseen at the time of concluding the Contract and for which the Seller is not responsible (such as operational disruptions of any kind, difficulties of acquiring material and energy, transport delays, strikes, legal lock-outs, lack of staff, energy or raw materials, difficulties of obtaining the necessary official permits, official measures or outstanding, incorrect or untimely deliveries by suppliers). If such events will lead to significantly more difficult deliveries or services for the Seller or to impossibility, and if such cause is not of a temporary nature, the Seller shall be entitled to withdraw from the Contract. In case of temporary cause, the delivery or service deadline shall be extended accordingly, or the delivery and services dates shall be moved in accordance with the period of cause plus an appropriate start-up period.

(5) The Seller shall be entitled to carry out deliveries in parts (*Teillieferung*), if

- the delivery in parts may be utilized by the Customer in the context of the contractually intended purpose,
- the delivery of the remaining ordered goods can be ensured, and
- no significant additional expenses or costs will incur for the Customer in this respect.

(6) The Seller shall be entitled to forward information (such as regarding the Customer, the contractual relationship, or possible individual orders) to a third party nominated by the Seller regarding export checks and sanction list screenings. In case of a positive test result, the Seller may terminate the contractual relationship with immediate effect.

### **§ 5 Place of execution, shipping, packaging, transfer of risks**

(1) The place of execution for all obligations based on this contractual relationship shall be the Seller's registered office unless stipulated otherwise in the order confirmation.

(2) The type of shipping and packaging shall be in the sole discretion of the Seller.

(3) The risk of title transfers to the Customer upon handing over the ordered goods (whereby the beginning of the loading process shall be decisive) to the carrier, the freight handler or a third party explicitly nominated for the execution of the shipping at the latest. This shall also apply if deliveries in part are being carried out or if the Seller also provides other services (such as shipping). If the shipping or handover is delayed due to circumstances for which the Customer is responsible, the risk of title shall be transferred to the Customer on the same day, on which the ordered goods are ready for shipping and if the Seller has notified the Customer of the delay accordingly.

(4) Any storage costs incurred after the transfer of risk shall be borne by the Customer. In case of storage by the Seller, the storage costs amount to 0.25% per week of the invoice amount for the ordered goods to be stored. The right to claim and prove further or lower storage costs remains reserved.

#### **§ 6 Warranty, material damage, reimbursement of expenses**

(1) The Seller grants the Customer a warranty of five years for the ordered goods from the date of delivery on. This deadline shall also apply to claims in accordance with § 8 (2). It shall not apply to compensation claims in the sense of § 8 (1) which become time-barred according to the applicable statutory law provisions. The statute of limitation for reimbursement of expenses claims (*Aufwendungsersatzanspruch*) (recourse by re-sellers) shall hereby not be affected.

(2) Immediately after receipt of the delivery the ordered goods are to be thoroughly checked by the Customer or by a third party nominated by it. The ordered goods shall be deemed to be accepted by the Customer regarding apparent damage or other defects which are recognizable in case of an immediate and thorough check, if the Seller does not receive a written notification of defects (the "complaint") within seven working days upon the delivery of the ordered goods. Regarding other defects, the ordered goods shall be deemed to be accepted by the Customer if the Seller does not receive a complaint within seven working days upon the date of identification of the defect by the Customer; in case the defect could have been detected by the Customer at an earlier point in the ordinary course of business, the earlier date would be decisive in regards to the start date of the deadline for a complaint. Upon request of the Seller, the rejected ordered goods are to be sent back to the Seller free of charge. In case of a justified complaint, the Seller shall reimburse the Customer for the costs of the cheapest means of shipping; this shall not apply if increased costs were incurred due to the fact that the ordered goods are located at a different place than the usual place of use.

(3) In case of material damage to the ordered goods, the Seller shall be obligated and entitled to carry out repairs or replacement deliveries within an appropriate deadline at its discretion. In case the Seller is unsuccessful, i.e. if it is impossible, unreasonable, not acceptable or if there is an inappropriate delay in regards to the repair or replacement delivery, the Customer may withdraw from the Contract or reduce the purchase price accordingly.

(4) If such damages were caused by the Seller, the Customer may demand compensation in accordance with the conditions lined out in § 8.

(5) In case of material damages in regards to components by other manufacturers which the Seller is unable to remedy due to license rights or for factual reasons, the Seller may claim its warranty rights against the manufacturer and suppliers in regards to the Customer's invoice, or the Seller may assign these to the Customer at its discretion. Any warranty claims against the Seller exist only regarding such material damages and other conditions and in accordance with these terms of delivery if court proceedings in regards to the above-stated claims against the manufacturer and supplier were unsuccessful or if they are unlikely to be successful due to, for example, insolvency. For the duration of the legal dispute, any statute of limitation of the respective warranty claims by the Customer against the Seller shall be suspended accordingly.

(6) The warranty claim shall be deemed to be waived by the Customer, if the Customer alters the ordered goods without the Seller's prior consent, or if they are altered by a third party instructed by the Customer, and which would make it impossible or

unreasonably difficult for the Seller to remedy the defects. In any case, the Customer shall meet any additional defect removal costs incurred regarding such changes.

(7) In addition to § 6 para. 1 to 6 above the following provisions shall govern any claims for defects (*Mängelansprüche*) by the Customer in case the ordered goods are sold to a third party by the Customer ("Customer's customer"). In all other respects the statutory provisions shall apply:

a) In case of a sale to end customers (*Verbrauchsgüterkauf*, § 474 BGB) the statutory assumption of § 478 para. 1, § 477 BGB is not applicable, i.e. that the defect was already existent at the passing of risk to the purchaser, if the time between the passing of risk to the Customer and the passing of risk to the Customer's customer is longer than six months except for those cases explicitly regulated by law;

b) Claims for supplementary performance in accordance with § 6 para. 3 (*Nacherfüllungsanspruch*) are subject to the following conditions: Customer may only ask Seller for the same supplementary performance Customer owes Customer's customers. Seller has thereby no right to choose (*kein Wahlrecht*). In case (i) Customer may refuse its supplementary performance to Customer's customer because of disproportionate expenses (*unverhältnismäßige Kosten*) out of statutory or contractual rights and (ii) Customer has not exercised such right of refusal Seller is only obliged to reimburse Customer of its proportionate expenses in accordance with § 439 para. 4 BGB. Customer may assign such claim for reimbursement of expenses to its own customer but only in fulfillment (*erfüllungshalber*) or as a security (*sicherungshalber*) of its own obligations, i.e. regardless of its liability to Customer's customer. An assignment instead of fulfillment (*an Erfüllung statt*) is not permitted. Seller may only refuse claims for reimbursement of expenses under the statutory provisions.

c) In case Seller offers Customer a similar compensation (*gleichwertiger Ausgleich*) according to § 438 para. 2 BGB, e.g. by way of a product guarantee, claims of Customer for reimbursement against Customer's customer (§445 a BGB) are excluded. Guarantee offers made before the actual sale by the Seller to the Customer for Customer's customer will be deemed as a similar compensation if Seller's offer contains at a minimum a free of charge and free of defect substitute of the defective goods.

#### **§ 7 Industrial property rights**

(1) In accordance with this § 7, the Seller is obliged to ensure that the ordered goods are free of any industrial property rights or third party copyrights. Each party shall notify the other immediately and in writing if claims are submitted against them for an infringement of such rights.

(2) In case the ordered goods infringe an industrial property right or a third party copyright, the Seller shall modify or exchange the ordered goods at its discretion and expense in such way that they no longer infringe any third party right but still comply with the contractually agreed specifications, or by granting the Customer a user right by acquiring the respective license. If the Seller is unable to do so within an appropriate timeframe, the Customer shall be entitled to withdraw from the Contract or to reduce the purchase price respectively. Possible compensation entitlements by the Customer shall be subject to the limitations of § 8 of these terms of delivery.

(3) In case of an infringement by the ordered goods manufactured by other manufacturers than the Seller, the Seller shall, at its discretion, either claim its rights against such manufacturer and its sub-suppliers for the account of the Customer, or shall assign such rights to the Customer instead. Any claims against the Seller shall only be valid in accordance with this § 7 if a legal execution of the above-stated entitlements against the manufacturers and sub-suppliers was unsuccessful or if it is likely to be unsuccessful, for example due to insolvency.

#### **§ 8 Liability**

(1) The liability of the Seller for damages shall be limited to claims of willful misconduct (*Vorsatz*), in regards to guaranteed conditions of the ordered goods, for injuries to life, body or health or in case of product liability claims (*Produkthaftungsfälle*).

(2) The Seller shall not be liable in case of simple negligence (*einfache Fahrlässigkeit*) committed by one of its corporate bodies (*Organe*), legal representatives, staff or other assistants, as long as

this is not regarded as a breach of substantive contractual obligations.

(3) To the extent that the Seller is obligated to compensate the Customer according to § 8 (2), this liability shall be limited to damages which the Seller foresaw as a possible consequence of a breach of the Contract at the time of concluding the Contract, or which had to be foreseen if the Seller had applied due diligence in this regard. Indirect damages, lost profits and subsequent damages (*Folgeschäden*) which are the result of defects of the ordered goods shall only be compensated for by the Seller if such damages could normally be expected by the use of the ordered goods in the ordinary course of business.

(4) In case of liability claims based on simple negligence, the Seller's compensation duty concerning material damage and any subsequent damage shall be limited to an amount of EUR 1,000,000 per case, even if such claims will be considered as a breach of substantive contractual obligations.

(5) The above mentioned liability exceptions and limitations shall also apply to all corporate bodies, legal representatives, staff and other assistants of the Seller to the same extent.

(6) In case the Seller has provided technical details or any advice to the Customer and if such information or advice does not form part of its services owed or was previously contractually agreed with the Customer, such advice and information shall be provided free of charge. Any liability for the completeness and correctness of such information or advice shall be excluded.

#### **§ 9 Retention of title**

(1) The following clause of retention of title serves as a means of securing all respectively existing and future claims by the Seller against the Customer in connection with the contractual relationship between the parties (including current account balance claims limited to this contractual relationship).

(2) The ordered goods delivered to the Customer by the Seller shall remain the property of the Seller until all secured claims have been paid in full by the Customer. The ordered goods as well as the goods covered by this retention of title replacing the ordered goods in accordance with the following sections of this § 9 shall be referred to as the "reserved goods."

(3) The Customer shall store the reserved goods for the Seller free of charge.

(4) The Customer shall be entitled to process and sell the reserved goods in the ordinary course of business until the event of enforcement (*Verwertungsfall*) in the sense of § 9 (9) occurs. Any pledging and assignments as security of the reserved goods shall not be permitted.

(5) If the reserved goods are being processed by the Customer, it is herewith agreed that the processing shall be carried out in the name and on account of the Seller as the genuine manufacturer, and that the Seller shall have direct ownership or – if the processing involves the materials of several manufactures, or if the value of the processed goods is higher than the value of the reserved goods – co-ownership (partial ownership) in the newly created goods in relation to the value of the reserved goods compared to the value of the newly created goods. In case that such an acquisition of ownership by the Seller does not occur, the Customer shall transfer its future ownership or – in the above-stated relation – co-ownership in the newly created goods to the Seller at this point by way of security. If the reserved goods are being joined with other goods in order to form a consistent item, or if they are mixed inextricably, and if one of the other goods is to be regarded as the main item, the Seller shall transfer, as far as the ownership of the main item belongs to the Seller, its respective co-ownership in the consistent item to the Customer in the ratio stated in this § 9 (5) sentence 1.

(6) In case of re-sale of the reserved goods, the Customer hereby already transfers its future claims against the acquiring party to the Seller by way of security – and in the case of a co-ownership of the Seller in the reserved goods the Customer transfers pro rata in accordance with its co-ownership share. The same shall apply for other claims, which replace the reserved goods or which otherwise come into existence in regards to the reserved goods, such as insurance or tort claims in case of loss or destruction of the reserved goods. The Seller authorizes the Customer in a revocable way to enforce the claims, which have been transferred to the Seller, in its own name. The Seller may only revoke this enforcement authorization in the event of enforcement as stipulated in § 9 (9).

(7) Should third parties seize the reserved goods, in particular by way of pledging, the Customer shall notify such parties immediately of the ownership of the Seller and shall notify the Seller, in order to facilitate the enforcement of its ownership rights. In case the third parties are not able to reimburse the Seller for the judicial and or non-judicial costs and expenses, the Customer will fully indemnify the Seller.

(8) The Seller shall release the reserved goods, as well as any items or demands taking their place, if the value exceeds the amount of the secured demands by more than 50%. The selection of the items to be released after that shall be in the sole discretion of the Seller.

(9) If the Seller chooses to withdraw from the Contract in case of the Customer acting in breach of the Contract – and especially in case of payment defaults – (event of enforcement), the Seller is entitled to demand the reserved goods from the Customer immediately.

#### **§ 10 Final provisions**

(1) These general term of delivery and the Contract as well as the entire legal relations between the parties shall be subject to the law of the Federal Republic of Germany, whilst excluding its principles of conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods dated 11<sup>th</sup> April 1980 (CISG).

(2) The exclusive place of jurisdiction to all disputes based on these terms of delivery and the contracts resulting thereof shall be the Seller's registered office.

(3) If individual conditions of these terms of delivery or the Contract are or become invalid or unfeasible, the validity of the remaining conditions remains unaffected. The parties agree to replace the invalid or unfeasible condition with a valid and feasible condition which is closest to the commercial purpose of the invalid or unfeasible provision. This applies respectively for the supplemental interpretation of this agreement.

#### **Note:**

The Customer acknowledges that the Seller stores data of the parties' contractual relationship in order to process such data in accordance with § 28 of the German federal data protection act; the Seller reserves the right to transmit such data to third parties (such as insurance companies), insofar as this is required for the fulfillment of the Contract.

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