General Terms of Sale

3M Deutschland GmbH

1. Validity: The sale of our products and other services is subject exclusively to the following General Terms of Sale. These General Terms of Sales are deemed to have been accepted without reservation by the purchaser at the latest when he takes delivery of our products or accepts our services. The General Conditions of the purchaser do not apply even if the purchaser has agreed to such terms in writing when the contract was concluded. These General Terms of Sale shall also exclusively apply if we effect delivery or provide the service without reservation in the knowledge of the special conditions of the purchaser. This applies in particular to orders in the course of tender procedures. The General Terms of Sale apply only in relation to enterprises as defined in § 14 of the German Civil Code (BGB).

2. Offers: Our offers are subject to prior sale. Samples and specimens are intended as additional information and are not binding. We reserve the right to deliver up to and including 10% more or less than the ordered quantity.

3. Prices: Unless otherwise indicated, our prices are net prices. The statutory VAT, if applicable, will be separately listed in the invoice in the statutory amount. In the case of deliveries of goods the prices are quoted ex factory or warehouse and include our standard packaging charges, unless otherwise agreed. If it has been agreed that the goods shall be delivered freight paid, the freight charges shall be paid as far as the purchaser’s local station and do not include carriage from there to the purchaser’s premises. Any additional expenses that are incurred because the purchaser stipulates a particular form of delivery (e.g. express goods) shall be borne by the purchaser. Unless otherwise agreed, the purchaser shall pay the delivery costs.

4. Dispatch; Passing of risks: The goods are always dispatched at the purchaser’s risk. The risk passes to the purchaser as soon as the goods are handed over to the forwarding agent, at the latest when they leave our factory or warehouse or, in the case of drop shipments when they leave our supplier’s factory or warehouse. The statutory regulations on the passing of risks in the case of default of acceptance shall remain unaffected.

5. Deliveries: The delivery times quoted by us represent the probable dates of delivery which we shall endeavour to observe. We are entitled to make partial deliveries to the extent this can be done without predamage to the interests of the purchaser. Partial deliveries will be invoiced separately and in accordance with the payment conditions in Section 6.

Agreed delivery dates are only binding if all details of the order are clarified in advance and the purchaser duly fulfills all his obligations. If a delivery date that has been expressly agreed in writing is not fulfilled, the purchaser may withdraw from the contract at the latest when the agreed delivery date is overdue. The purchaser must give us written notice of this intention without delay. If we still fail to deliver during this extension period, the purchaser is entitled to withdraw from the sales agreement. It is not necessary to grant an extension period provided that such period is dispensable as an exclusion pursuant to § 323 of the German Civil Code (BGB).

If we are in default in delivery due to slight negligence, our liability for financial losses (damages in addition to performance) is limited to 5% of the purchase price of the goods delivered with default. Liability for injury to life, the body or health shall remain unaffected. Claims of the purchaser for damages in lieu of performance are subject to the provisions of Section 10.

Circumstances or events beyond our control that make delivery delayed, impossible or unreasonably difficult, such as war, intervention by sovereign powers, natural disasters, accidents, traffic congestion, operational stoppages, shortages of raw materials and power, strikes and lawful lock-outs, even if they occur at our suppliers, release us from the delivery obligations for the duration of the disruption plus an appropriate set-up time. If, due to the duration of the disruption, it is no longer acceptable for a party to adhere to the contract in consideration of the parties’ mutual interests, each party is entitled to withdraw from the contract either in full or in part; however, the purchaser may only do so after giving a prior warning.

If the purchaser defaults on acceptance or culpably fails to comply with obligations, we are entitled to demand damages including the payment of possible additional expenses. We reserve the right to bring other claims.

6. Payments: Our invoices for the delivery of goods are payable without deduction within 30 days of the date of the invoice or with 2% discount within 10 days of the date of the invoice. Our invoices are payable without deduction within 10 days of the date of the invoice. Payments shall be considered to have been made on time once the amount has been received by us and is at our unrestricted disposal. Checks will be accepted as conditional payment unless the amount is noted as unconditional.

If the payment period is overdrawn or the full amount is not paid in time, the purchaser shall be considered to be in default, even if no reminder is sent, at the latest 30 days after receipt of the invoice. As soon as the purchaser is in default, we are entitled, without prejudice to any other claims, to charge interest on arrears at a rate of 8 percentage points over the current base rate in accordance with § 247 of the German Civil Code (BGB).

If there are good reasons to doubt the purchaser’s ability to pay after the contract has been concluded, so that there is the risk that our payment claim will not be fulfilled, we may make all outstanding deliveries dependent on an advance payment or the provision of a security by the purchaser. If the purchaser does not meet our request for an advance payment or the provision of a security after an appropriate period set by us, we shall be entitled to withdraw from all existing agreements.

The purchaser can only offset undisputed or legally proven claims and can only exercise a right of retention in respect of claims arising from the same contract. This limitation shall not apply for claims of the purchaser for defects or for partial non-performance that are based on the same contract as our claim.

7. Property rights: The goods supplied remain our property until the purchase price and all other existing or future claims from the transaction have been paid in full (goods under reserve). The purchaser is entitled to sell the goods under reserve in the course of his normal business as long as he has no reservations on the values or indications to the contrary. The purchaser is not entitled to make all outstanding deliveries dependent on an advance payment or the provision of a security by the purchaser. The purchaser is not entitled to demand damages including the payment of possible additional expenses. We reserve the right to bring other claims.

8. Information; Advice: All verbal or written information about the suitability of our products for certain applications is given in good faith. This does not exempt the purchaser from the duty to ensure that the goods are suitable for the intended purpose and to ensure that they are accepted or used in accordance with the intended purpose. The information and advice given by us are supplementary to our offers and do not replace professional advice by experts. We reserve the right to supply additional information and are not bound by it. We reserve the right to deliver up to and including the other materials. In the event of a combination, blending or mixing with manufactured product proportionate to the ratio of the gross invoice value of the goods under reserve as compared to the other materials and do not include carriage from there to the purchaser's premises. Any additional expenses that are incurred because the purchaser stipulates a particular form of delivery (e.g. express goods) shall be borne by the purchaser. Unless otherwise agreed, the purchaser shall pay the delivery costs.

9. Warranty claims: Before making any warranty claims, the purchaser must first have duly complied with the obligations relating to product examination and the proper complaints procedures contained in § 377 of the German Commercial Code (HGB). Warranty claims by the purchaser must also be submitted by the time they are caused, or we are to be held harmless from damage caused by the purchaser himself, or the handling or processing of the goods supplied. Moreover, warranty claims are not permitted for natural wear and tear. If the purchased goods are inherently defective, the purchaser is entitled to demand the defect remedied or a reduction in the purchase price, or the goods be released from the contract. Our liability for damages is subject to the provisions of Section 10.

The period of limitation for warranty claims is 12 months from the delivery of the goods. By derogation from the foregoing, in the event of a claim for wilful intent or gross negligence or due to a culpable injury of the life, body or health shall be 2 years from the delivery of the goods. The statutory period of limitation in the event of supplier recourse as well as the guarantee period in the cases of § 438 (1) no. 2 of the German Civil Code (BGB) remain unaffected.

10. Liability: We accept liability for intent and gross negligence. We are also liable for any culpable breach of major contractual obligations. Major contractual obligations are those obligations that have to be met in order to achieve the purpose of the contract and on the compliance with which the purchaser regularly trusts and may regularly trust. If a breach of major contractual obligations is due to negligence, our liability is limited to the foreseeable damage associated with this type of contract. This does not affect our liability for culpable bodily injury or damage to health; this also applies to liability in cases of fraudulent concealment of a defect. If a guarantee has been assumed as well as under the German Product Liability Act (“Produkthaftungsgesetz”) and the German Medical Preparations Act (“Arzneimittelgesetz”). Other claims for compensation are excluded.

If the aforementioned limitation of liability does not apply, the purchaser asserts a claim for a refund of futile expenses instead of a claim for damages in lieu of performance.

11. Export Control: We point out that the goods sold may be subject to restrictions under foreign trade law when they are resold by the purchaser. A potential listing pursuant to Annex 1 of the EC Dual Use Regulation or an ECCN listing may be taken from the relevant business regulations. The purchaser must ensure that if they are resold by the purchaser at his request.

12. Compliance with statutory regulations: Standards of conduct: The purchaser undertake to comply with the applicable statutory regulations, in particular anti-money laundering regulations and regulations for compliance with the principles of fair competition. The purchaser has to ensure by taking suitable measures that his legal representatives and employees do not offer, promise or grant undue benefits in order to influence business decisions, and not themselves accept such benefits.

In the event of a breach of the aforementioned obligations, we are entitled to withdraw from the contract. If we do not make available an appropriate extension period if special circumstances, in particular the gravity of the breach, justify an immediate withdrawal or an immediate termination respectively in consideration of the parties’ mutual interests.

13. Place of performance: The place of performance for our deliveries is the respective place of dispatch. The place of performance for the purchaser’s payment obligations is Neuss, Germany.

14. Applicable law; Place of Jurisdiction: All legal relations between the purchaser and us shall be subject exclusively to the laws of the Federal Republic of Germany; the United Nations Convention on the International Sale of Goods (CISG) shall not apply. If the purchaser is an entrepreneur, a legal entity under public law or a special fund under public law, all disputes arising from and in connection with the contract shall come under the jurisdiction of the courts at our place of business. This shall be the exclusive place of jurisdiction for the purchaser, we can also file a legal action against the purchaser in the courts of the purchaser’s place of general jurisdiction.

Issued: April 2018

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