

*Terms and Conditions of Delivery and Payment of erlenbacher backwarden gmbh, Wasserweg 39, D-64521 Groß-Gerau  
Valid as of: January 1st, 2010*

These Terms and Conditions constitute an integral part of the contract for the sale and delivery of our products. Confirmations by the customer referring to his/its own general terms and conditions of business are hereby rejected. Any other general terms and conditions of business or any amendments to our Terms and Conditions of Delivery and Payment shall not form an integral part of the contract by silence or delivery but only means of a written confirmation. Any amendment of our Terms and Conditions of Delivery and Payment shall not be intended in cases of doubt.

#### 1. Offer

Our offers are subject to change without notice. Orders placed by our customers shall only be accepted by means of a written confirmation signed by our management or as a result of delivery.

#### 2. Prices

Prices shall be determined on the basis of the current price list on the date of delivery. Agreed prices shall include all costs for the "Green Dot" and shall be subject to change without notice.

#### 3. Force Majeure

In the event of force majeure or any other impediment to our delivery capability not attributable to us, we shall be exempt from our delivery obligation without this giving rise to a damage compensation obligation. Cases of force majeure shall include, inter alia, transport interruptions, production breakdowns, delays in the delivery of raw materials and all forms of labour disputes unless otherwise prescribed by cogent law.

The customer shall be entitled to revoke the order if we are unable to comply with a reasonable period of grace.

#### 4. Transfer of Risk

Risk shall pass to the customer:

4.1. upon delivery by our vehicles or sub-contracted vehicles and hand-over at the place of destination

4.2. upon collection by the customer or in vehicles sub-contracted by the customer if the goods have left our warehouse or loading ramp.

#### 5. Acceptance delay

If the customer is in acceptance delay, we shall be entitled to withdraw from the contract and to demand compensation after having set a maximum period of grace of 14 days. A higher daily price may be charged to the customer if acceptance is delayed. We may charge a flat rate of 5 % of the lost net sales as compensation without appropriate documentation, whereby the Customer may prove that we incurred no loss at all or a lower loss. Additional compensation claims shall not be prejudiced thereby.

#### 6. Delivery

Our deadline promises shall always be non-committal notwithstanding our efforts to comply with delivery dates. In the event of force majeure or production, despatch or transport disruptions, delivery dates shall be extended by the duration of the disruption – even if any sub-contractors are involved.

The customer shall be immediately informed of the occurrence and the anticipated duration of the disruption.

Both parties may withdraw from an individual order without having to pay compensation if the performance if the contract lasts longer than one month.

If deadlines are not upheld, or if delivery is impossible, the customer shall be entitled to enforce compensation claims within the scope of the provisions under Section 8 if the prerequisites of delay or impossibility are met.

We shall be entitled to make part-deliveries.

#### 7. Defect Claims

The customer shall inspect delivered goods to a reasonable extent immediately upon delivery and shall immediately notify any defects in accordance with § 377 of the German Commercial Code but at the latest within 8 days of receipt of the goods and hidden defects immediately after they have been identified. Receipt of the relevant notification by us shall apply for compliance with the specified period. Delivered goods shall be stored and handled carefully until they have been inspected. Returns may only be made with our consent. Volume-related complaints or differences with regard to the type of goods are to be established and confirmed by the deliverer immediately.

The customer shall be entitled to rectification if complaints are submitted on time and are justified, We shall be entitled to refuse a rectification based on the relevant legal regulations. A refusal to rectify defects, an abortive rectification of defects rectifications which are unreasonable for the customer shall entitle the customer to withdraw from the contract or to demand a price reduction as governed below. Unless a withdrawal is excluded by law, the customer shall be entitled to withdraw from the contract or to demand a reduction in the purchase price only after having set a reasonable but abortive period of grace for the rectification of defects unless the aforesaid period of grace can be dispensed with by law. In the event of withdrawal, the customer shall be liable for any deterioration, fortuitous loss or unclaimed benefits not falling within the scope of his/its own duty of care but shall be liable for all negligent or wilful blame.

Any damage compensation claims and cost reimbursement claims of the customer shall be based on the relevant provisions under Section 8. If the final buyer or the purchased goods is a retail consumer in the delivery chain, the buyer shall be entitled to have recourse in accordance with the relevant legal regulations if the prerequisites of § 377 of the German Commercial Code (HGB) are met. Any damage compensation claims and cost reimbursement claims shall be based exclusively on Section 8. If we are not the manufacturer of delivered goods, defect claims can only be lodged against us to the extent that we are able to enforce recourse claims against sub-contractors. We shall assume no responsibility for opinions and advertising statements on our products unless these have been directly initiated by us.

#### 8. Damage Compensation and Liability

In the event of breaches of obligations of all kinds, defective deliveries, tortious acts and product liability, we shall only be liable for damage compensation and reimbursement of costs for wilful intent, gross negligence and a slightly negligent breach of a major contract obligation jeopardizing the purpose of the contract. We shall reserve the right to additional statutory liability prerequisites and liability conditions governed in individual contracts. Our liability shall, however, be limited to foreseeable and typical contract damages – with the exception of wilful intent. Liability for slight negligence shall at all events be excluded but limited to the amount of the purchase price – with the exception of major obligations. As far as delay damages are concerned, we shall only be liable up to 5 % of the purchase price agreed with us in the case of slight negligence. Abortive expenditure may under no circumstances be enforced.

The liability exclusions and limitations referred to in the above paragraph do not relate to claims of the Customer in the event of mandatory liability under the German Product Liability Act, in the event of the assumption of a guarantee for warranted product qualities within the meaning of § 444 of the German Civil Code (BGB), in the event of fraudulent non-disclosure of a defect and in the event of damages caused by injury to life, body or health. Damage compensation claims lodged against us shall, regardless of the legal cause, be statute-barred at the latest one year after delivery of the goods to the customer, in the event of tortious liability or a grossly negligent lack of knowledge of the facts and circumstances justifying the claim and the person of the person held liable. Any shorter statutory exclusion periods shall always have priority. The relevant legal regulations shall apply in the event of liability for wilful intent and in the event of physical and health damages attributable to us or in the event of a loss of life. If the ultimate buyer of goods is a consumer, the relevant legal regulations shall apply for the expiry of any recourse claims of the customer against us. The acceptance of notes and

customer bills of exchanges shall be reserved by us in individual cases. Cheques and bank direct debits shall only be treated as payments after the relevant amounts have been collected and credited to our bank account. Discount expenses and other costs shall be for the account of the customer.

The customer shall only be entitled to offset any amounts if his/its counter-claims are undisputed or have been established by declaratory judgement.

The customer shall not be entitled to exercise a withdrawal right in connection with earlier or other business transactions in connection with the business relationship. If the agreed payment date is overstepped, delay and default shall automatically apply. In this case, we shall be entitled to charge default interest at 5 percentage points p.a. and in the case of entrepreneurs 8 percentage points p.a. above the base rate of the German Bundesbank and only to execute additional deliveries in exchange for cash payments.

In the event of circumstances occurring which are detrimental to the creditworthiness of the customer, or in the event of pending insolvency of the customer, we shall be entitled to withdraw from the delivery contract or to enforce an extraordinary termination right unless the buyer provides security within a period to be determined by us.

Upon request, the customer shall be obliged to return all goods or other items belonging to us, including those goods or other items which have been assigned to us as security for our claims. Any prolongation with the discounting of bills of exchange shall become void; the customer shall be obliged to pay cash in exchange for the return of bills of exchange.

## 9. Reservation of Title

9.1. We shall reserve our title to delivered goods pending settlement of all our claims in connection with the business relationship against the customer. Any withdrawal of individual claims and netting off any balances and their acceptance shall not affect the aforesaid reservation of title. Reserved goods may only be sold in the ordinary course of business. The remaining claims against third parties shall be assigned to us by way of security. As soon as rights in connection with the reservation of title are enforced by us, the customer shall be required to inform us of the name of customers to whom he/it has resold the goods and in what amount claims are outstanding in connection with the resale. In the event of resale for cash, the goods shall be immediately replaced by cash whereby the proceeds are to be transferred without delay. Pledges and any other interventions or seizures of goods by third parties subject to our reservation of title shall be reported to us immediately. The Customer has to draw the attention of third parties to our ownership.

Defences and objections against our repossession claims or claims assigned to us on the basis of these Terms and Conditions shall be excluded. We shall be entitled to have access to the warehouse of the customer ourselves or by an authorized representative in order to establish the existence of the goods subject to our reservation of title.

We shall undertake to release existing securities of our choice if their value exceeds the securable claim by 20 %.

9.2. If the customer becomes insolvent, it is hereby agreed that all securities provided shall also be valid in the event of the bankruptcy receiver exercising his option right in accordance with the Insolvency Regulation (InsO) and performance of the contract.

The originally agreed reservation of title or other securities provided may therefore be enforced by us in the event of the originally selected performance of the contract within the scope of the option right of the bankruptcy receiver being abortive.

In the event of a change of the law or the legal position, the present clause shall be interpreted accordingly in line with the economic purpose referred to above and shall be adapted if necessary.

## 10. Payment conditions and withdrawal right

The purchase price (the agreed compensation plus the statutory value-added tax) shall be payable immediately net, in cash or by bank transfer/direct debit upon receipt of the invoice unless otherwise agreed.

The acceptance of notes and customer bills of exchanges shall be reserved by us in individual cases. Cheques and bank direct debits shall only be treated as payments after the relevant amounts have been collected and credited to our bank account. Discount expenses and

other costs shall be for the account of the customer. The customer shall only be entitled to offset any amounts if his/its counter-claims are undisputed or have been established by declaratory judgement.

The Customer is not allowed to exercise any retention right in connection with former or other transactions forming part of the business relationship unless the counterclaims are recognized by us or have been established by declaratory judgement. If the agreed payment date is overstepped, delay and default shall automatically apply. In this case, we shall be entitled to charge default interest at 5 percentage points p.a. and in the case of entrepreneurs 8 percentage points p.a. above the base rate of the German Bundesbank and only to execute additional deliveries in exchange for cash payments.

We are entitled to withdraw from non-completed contracts of sale without notice by means of a declaration to the Buyer and to demand compensation if the necessary statutory prerequisites are met, if the Buyer seriously and conclusively refuses to make payments, if judicial insolvency proceedings are petitioned against the Customer or if extra-judicial composition proceedings are started. Our claims shall be due immediately if the financial position of the Customer deteriorates significantly.

Upon request, the customer shall be obliged to return all goods or other items belonging to us, including those goods or other items which have been assigned to us as security for our claims. Any prolongation with the discounting of bills of exchange shall become void; the customer shall be obliged to pay cash in exchange for the return of bills of exchange.

## 11. Reduced Quantities

The minimum order quantity is one pallet. If for any reason a quantity of less than one pallet is ordered, we will charge a reduced quantities fee in conformity with a separate agreement.

## 12. Objects on Loan

The objects on loan handed over to the customer (pallets, refrigeration and deep-freeze equipment, sales devices, advertising materials and similar objects) remain in our ownership even when a security deposit has been paid. The customer shall return the objects on loan to us in clean condition immediately following proper use. Defence against our right to repossession or recovery, e.g. retention rights, shall be excluded for registered traders unless the aforesaid defences are recognized by us or are established by declaratory judgement.

## 13. Non-Validity Clause

If individual provisions of the agreement between us and our customer are or become non-valid or voidable, the validity of the remaining provisions shall not be affected; the remaining provisions shall be interpreted in conformity with the economic purpose pursued by the non-valid or voidable provision.

## 14. Place of Performance, Jurisdiction

Place of performance for all payments is Groß-Gerau.

In the relationship to merchants, sole jurisdiction is that of Groß-Gerau. In all other cases, this provision shall also apply to claims against customers who after conclusion of the contract move their place of residence or habitual abode outside the area of applicability of the ZPO (Civil Procedure) or whose place of residence or of habitual abode is not known to us at the time of court suit for recovery of our claims.

Proper law of the relationships between the customers and us is solely that of the Federal Republic of Germany; this provision also applies to all contractual, extra-contractual and non-contractual claims, to the extent that it is not contrary to compulsory domestic or international law.