

## General Terms and Conditions for the Sale of SHOWA DENKO Products

### 1. Application of the terms and conditions

(1) These Terms and Conditions of Sale apply to business entities as per § 14 German Civil Code (BGB) only. They also govern all future transactions with the buyer. Special conditions apply for the Shodex product line supplied by us which may be inspected at [www.shodex.de](http://www.shodex.de).

(2) Our Terms and Conditions of Sale apply exclusively. We do not acknowledge any conditions of the buyer that conflict with or deviate from our Terms and Conditions of Sale, even if we perform the contract without expressing any reservations.

(3) Unless otherwise stipulated in these Terms and Conditions of Sale, the terms and definitions of the INCOTERMS 2010 apply.

### 2. Conclusion of the contract

(1) Our quotations are without obligation. Likewise, technical descriptions and other details contained in offers, brochures and other sources of information initially have no binding effect.

(2) The signed order placed by buyer shall be deemed accepted by us only, if it has been confirmed by us. The scope of our delivery obligations and the specifications of the goods shall be determined exclusively by our offers and order confirmations.

### 3. Prices and terms of payment

(1) Unless otherwise agreed purchase prices are payable immediately on receipt of the goods, however, no later than 14 days from the date of invoice in cash or by bank transfer. They are deemed to have been paid with effect from the date on which the amount is at our free disposal. The deduction of cash discount requires a special written agreement. The buyer must pay any taxes or customs duties, etc. levied on the transaction in the country of receipt.

(2) Other forms of payment require a separate written agreement. The buyer pays the costs incurred by both parties for such forms of payment.

(3) If there is a change in the costs incurred by us for delivery between our quotation or confirming the order until delivery, e.g. as a result of the subsequent introduction of - or an increase in - duties, taxes or other charges imposed on the goods, including but not limited to EU duties and anti-dumping duties or countervailing duties or similar or in the event of a change in currency parities, we are entitled to adapt the price offered or agreed accordingly.

(4) Our price quotations are net prices and do not include value-added tax. If value-added tax must be charged it will be shown separately on the invoice at the statutory rate in application on the date of issue of the invoice.

(5) The buyer may exercise a right of withholding or set-off only with regard to receivables or claims of the buyer that are undisputed or have final and legally binding effect.

### 4. Delivery

(1) Our delivery dates or delivery periods are non-binding, unless a specific delivery date or delivery period has been expressly agreed or designated as binding. If our order confirmation indicates "No confirmed delivery date determined yet" then the goods must first be manufactured or shipped to us. In this case the non-binding delivery period will be 2 months from the date of our order confirmation.

(2) Six weeks after expiry of a non-binding delivery date or delivery period, the buyer may set us a reasonable subsequent date for delivery in writing.

(3) If the buyer can reasonably be expected to accept part deliveries, these may be made and invoiced.

(4) If it becomes apparent after conclusion of the contract that the buyer is unable to provide an adequate guarantee of its solvency and our claim to payment is in danger, we are entitled to refuse delivery until the buyer has effected payment or furnished security for the same. If no payment is made or security furnished within 12 working days of a request to this effect, we are entitled to rescind the contract.

(5) If the buyer is in default with a release order, acceptance or collection or the buyer is responsible for a delay in shipment or delivery, we are entitled, without prejudice to other claims, to require a flat-rate amount equal to local storage costs, regardless of whether the goods are being stored with us or a third party. The buyer has the right to prove that either no damages or lower damages were suffered.

(6) If we fail to receive deliveries from our own suppliers, although we placed matching orders with reliable suppliers, we are released from our obligation to deliver and can rescind the contract.

(7) In the event of the buyer cancelling the contract without cause, we are entitled to require 20% of the gross order value as liquidated damages (damages in lieu of performance). The same applies if the contract is not performed for reasons for which we are not responsible. The buyer has the right to prove that either no damages or lower damages were suffered.

(8) If we are unable to adhere to the agreed delivery period as a result of unforeseeable circumstances beyond our control affecting us or our suppliers (e.g. natural disasters, war, unrest, sovereign intervention, energy shortage, labour disputes, etc.), this period is extended accordingly. We shall notify the buyer without delay in such a case. If the impeding circumstances last longer than two months after expiry of the agreed delivery period, either party may rescind the contract. Further claims based on our failure to deliver within the delivery period for reasons for which we are not responsible are excluded.

(9) If the buyer suffers damages as a result of default in delivery, the buyer is entitled to claim 3% of the value of the delivery for each full week of default as liquidated default damages, however, a maximum of 10% of the value of the delivery. The buyer can also set us a reasonable subsequent date for delivery in writing after the six-weeks-period in clause 2 has been elapsed. If this subsequent deadline passes without issue, the buyer is entitled to rescind the contract or claim damages in lieu of performance. Liability to compensate damages is limited to 50% of the damages suffered.

(10) Clause (9) does not apply if default is due to intent, gross negligence or breach of an essential duty. It also does not apply if a transaction for delivery by a fixed date was agreed.

### 5. Defects

(1) The buyer shall adhere to the statutory duties of examination for defects and submission of any complaints necessary under applicable law.

(2) The buyer cannot derive any further rights from material defects that do not affect the value or suitability of the goods for the purpose recognisable to us or do so merely to a negligible extent.

(3) If the goods show defects at the time of passing the risk, we are entitled and obliged to subsequent performance. At our discretion, subsequent performance can take place by subsequent improvement or replacement delivery provided that this is reasonable for the buyer. The costs of subsequent performance, in particular, transport costs, travelling expenses, labour costs and material costs are at our expense. We are entitled to refuse the subsequent performance until buyer has paid the purchase price. However, buyer is entitled to retain a part of the purchase price which is appropriate in relation to the respective defect.

(4) If subsequent performance is unsuccessful, is unreasonable for the buyer, does not take place within a reasonable period of time set by the buyer or is refused, the buyer may, at its own discretion, rescind the contract, require a reduction in the selling price that corresponds to the reduction in value resulting from the defects or – within the limits of the following section 6 (Liability) – claim damages in lieu of performance.

(5) Clauses (2) to (4) have no effect on § 478 German Civil Code (BGB).

### 6. Liability

(1) Unless otherwise stated in these Terms and Conditions including the provisions below, our contractual and non-contractual liability is based on the relevant statutory provisions.

(2) For damages caused by intent or gross negligence we shall be liable irrespective of the legal basis. In case of simple negligence we are only liable a) for damages resulting from death or personal injury;

b) for damages resulting from the breach of essential contractual duties (cardinal duties); in this case, our liability is limited to foreseeable damages that are typically associated with the contract. An essential contractual duty is a duty whose compliance is of particular importance for achieving the contractual purpose. We are not liable for a breach of non-essential contractual duties through simple negligence.

(3) All other claims of the buyer based on contract or tort are excluded. For this reason, we are not liable for damages that did not occur to the actual goods delivered; we are equally not liable for economic loss or other financial loss of the buyer.

(4) The limitations of liability as to clause (2) - (3) do not apply if we have fraudulently concealed a defect or given a guarantee as to the workmanship of the product. The same applies to claims of the buyer in accordance with the product liability act (Produkthaftungsgesetz). Statements as to the quality of our products do not constitute a guarantee unless we have explicitly designated them as a guarantee.

(5) If our liability is excluded or limited, the personal liability of our employees, representatives and agents is limited or excluded to the same extent.

#### **7. Limitation period**

(1) Subject to § 438 No. 2, § 634a (1) No. 2, § 479 Civil Code (BGB), the buyer's right to subsequent performance becomes time-barred one year after delivery of the goods; no warranty claims are available for used items. Accordingly the right of rescission and to a price reduction under the statutory regulations is excluded.

(2) The limitation period for claims to damages is one year subject to § 438 No. 2, § 634a (1) No. 2, § 479 Civil Code (BGB).

(3) The statutory limitation period applies to claims under the product liability act (ProdHaftG), to cases of intent and gross negligence and for damages resulting from death or personal injury.

#### **8. Retention of title**

(1) Title to the goods is reserved until settlement of all our receivables due from the buyer from the business relations, including future receivables from contracts concluded at the same time or at a later date. The same applies if receivables are entered in a current account and the balance has been drawn and acknowledged.

(2) The Buyer is entitled to sell or process the goods in the normal course of business. The buyer undertakes any processing on our behalf without this giving rise to any obligations on our part. In the event of the retained-title goods being processed, combined or mixed with other goods, we always acquire a share of title in the new thing produced; in the event of processing, this share of title represents the proportion of the value (= gross invoice value including ancillary costs and taxes) of the retained-title goods in relation to the value of the new thing; in the event of combining or mixing, this share of title represents the proportion of the value of the retained-title goods in relation to the value of the other goods.

(3) However, the buyer already now assigns all receivables accruing to the buyer against a purchaser or third party out of the resale. The Buyer remains entitled to collect the receivable even after the assignment. This does not affect our authority to collect the receivables ourselves, however, we shall not exercise this right as long as the buyer continues to meet its payment and other obligations. If required, the buyer must notify us of the receivables assigned and their debtors, provide all details required for their collection, hand over the relevant documents and notify the debtors of the assignment.

(4) In the event of conduct in breach of contract by the buyer including, but not limited to, default in payment, we are entitled to rescind the contract and recover the product delivered. For the purpose of recovering the goods, the buyer hereby irrevocably grants us the right to enter its business premises and warehouse premises unhindered and to take away the goods.

(5) As long as title is retained, the buyer may not assign goods or things made from the goods or pledge them without our consent. Our prior written consent is required for the conclusion of financing contracts (for example, leasing agreements) that involve the transfer of our rights of retention unless the contract obliges the bank to pay us our share of the selling price directly.

(6) In the event of attachments or other intervention by third parties, the buyer must notify us without delay in writing. The buyer is prohibited from making any agreements with its purchasers that could impair our rights.

The buyer is obliged to insure the retained-title goods against theft, mechanical damage, fire and water damage.

(7) We undertake to release securities accruing to us to the extent to which such securities exceed the realisable value of the receivables to be secured by more than 20% or the nominal value of the securities by more than 50%.

#### **9. Export Control**

The buyer ensures to be compliant with any applicable export regulations. In particular the buyer undertakes to accept and comply with European, German and Japanese export control provisions as well as the US (re-)export requirements to the extent that the transfer to other Member States of the European Union / exportation to third countries of the items is subject to US law. In addition the buyer must inform himself of the relevant provisions and bears the responsibility for complying with them.

#### **10. General provisions**

(1) Place of performance is our registered office.

(2) If the buyer is a registered merchant for the purposes of the commercial register, a legal entity under public law or a public-law special fund then the exclusive (also international) place of jurisdiction for all disputes arising with the buyer is our registered office. The place of jurisdiction is not exclusive for us.

(3) Our business relationship with the buyer shall be exclusively governed by German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).