I. General provisions

The terms and conditions of sale set forth hereinafter apply on a binding and exclusive basis to all contractual relationships of Toho Tenax Europe GmbH (hereinafter also abbreviated “TTE”) vis-à-vis entrepreneurs (Unternehmer) as defined in § 14 BGB (Bürgerliches Gesetzbuch) [Civil Code] and other persons and entities in accordance with § 310 Para. 1 Clause 1 BGB. These terms and conditions of sale are deemed to be acknowledged upon the issuance or confirmation, as the case may be, of an order, but no later than upon acceptance of the goods, and they also apply to all future contracts. TTE does not acknowledge any terms and conditions of the customer that conflict herewith or vary herefrom unless the application thereof has been expressly approved in writing. These terms and conditions of sale apply even if TTE knows of terms and conditions of the customer that conflict herewith or vary herefrom and enters into a contract without reservation or performs the delivery to the customer without reservation.

The content of other contractual agreements shall be governed by a written contract or the written confirmation of TTE, as the case may be.

Notices and declarations that are significant for legal purposes and must be made by the customer vis-à-vis TTE after the time at which the contract is entered into (e.g., setting of time limits, warning notices, declarations of rescission) are not valid unless made in written form.

Offers from TTE are non-binding and subject to change. Statements of acceptance and all orders from the customer are not legally valid except where confirmed by TTE in writing or by telephone. Representatives of TTE have no authority to enter into contracts or agreements. Carbon copy order forms issued by representatives of TTE are, however, considered to constitute confirmation unless TTE contracts them within two weeks or transmits an order confirmation that varies therefrom. If an order, confirmation, or order form from the customer qualifies as an offer as defined in § 145 BGB, TTE is permitted to accept such offer within two weeks.

The customer is not permitted to disclose information designated as “confidential” or similar to third parties except with TTE’s express written consent.

Pursuant to § 28 BDSG (Bundesdatenschutzgesetz) [Federal Data Protection Act], TTE is entitled to save, process, and transmit for its own use data concerning the exchange of goods and payments with customers for the purpose of handling the contractual relationship.

Should individual provisions of these terms and conditions of sale be or become invalid or unenforceable in whole or in part, the remaining provisions hereof shall be unaffected by such circumstance.

II. Delivery; passage of risk

Unless otherwise agreed in writing, domestic delivery free to the receiving railway station (frei Empfangsbahnstation) or free delivery via truck, and in the case of delivery abroad, delivery “ex works” in accordance with INCOTERMS 2010 is agreed. The delivery period shall not commence until all technical questions have been clarified and is subject to the written form from the customer qualifies as an offer as defined in § 145 BGB, TTE is permitted to accept such offer within two weeks. Pursuant to § 28 BDSG (Bundesdatenschutzgesetz) [Federal Data Protection Act], TTE is entitled to save, process, and transmit for its own use data concerning the exchange of goods and payments with customers for the purpose of handling the contractual relationship. Carbon copy order forms issued by representatives of TTE are, however, considered to constitute confirmation unless TTE contracts them within two weeks or transmits an order confirmation that varies therefrom. If an order, confirmation, or order form from the customer qualifies as an offer as defined in § 145 BGB, TTE is permitted to accept such offer within two weeks.

The risk of accidental loss or deterioration of the purchased item shall pass to the customer no later than at the time at which the customer has fallen in default of acceptance. The risk of accidental loss or deterioration of the purchased item shall remain with TTE as long as the purchased item leaves TTE’s plant or warehouse. TTE is not liable for damage caused to the objects of delivery by employees of TTE in connection with the delivery and installation or setup, except in cases of intention and gross negligence on the part of such employees. TTE is entitled to enter into third-party liability insurance policies without being obligated to enter into specific insurance policies or obtain coverage for a specific limit. TTE is permitted to release it- self by assigning the coverage claims on the third-party liability insurers to the customer’s parties. Should the third-party liability insurers deny that they are under an obligation to bear responsibility, TTE’s own liability shall be unaffected.

TTE reserves the right to make minor changes to its products. Minor variations, or variations that cannot be avoided through technical means, in quality, color, weight, dimensions, and/or design do not constitute grounds for a complaint. This provision applies in particular to subsequent deliveries (Nachlieferungen). In the case of special production, deliveries are permitted to exceed or fall short of the specified figures by up to 10% on the same contractual terms and conditions. If special production involves lb goods (Ib-Ware), the customer is required to accept such goods as lb goods in a share of up to 10% of the total quantity delivered, at a price that has been reduced accordingly.

TTE is liable for any and all damage and/or losses sustained as a result of delivery or default, including any and all consequential damage and/or losses sustained by the customer, but only if the underlying purchase agreement constitutes a transaction for delivery or performance by a fixed date (Fix- geschäft) within the meaning of § 326 Para. 2 No. 4 BGB or § 376 HGB (Handelsgesetzbuch) [Commercial Code]. If, and insofar as, as a result of intentional or grossly negligent delay or default in delivery for which TTE is responsible, the customer is demonstrably entitled to assert that its interest in the fulfillment of the contract has been retarded, TTE shall be liable for the portion of the contract that has not yet been fulfilled. TTE shall not be liable in any other cases or in any other respects, and in particular shall not be liable for consequential damage or losses of any kind whatsoever. In cases of breach or default in delivery is not based on an intentional or grossly negligent breach of contract for which TTE is responsible, TTE’s liability for damages is limited to the amount of damage or loss that is foreseeable and typically occurs in such cases. TTE is furthermore liable, in the event of delay or default in delivery, for liquidated damages or a default rate of interest on the net price (delivery value) for each full week during which such circumstance persists, but not more in total than 5% of the delivery value of the goods delivered late. TTE reserves the right to furnish evidence that the customer has sustained no or no greater damage or loss as a result of such circumstance, that the amount of damage or loss sustained by the customer as a result thereof was substantially lower than the foregoing amount of liquidated damages.

Delays in delivery and performance due to force majeure and based on other events for which TTE is not responsible and that render delivery substantially more difficult or impossible for TTE on a more than temporary basis – including, in particular, lack of suitable materials, strike, lockout, orders issued by the governmental authorities, air force, state, federal or local authorities, laws, regulations, orders, or other government actions, acts of war, revolution, civil war, public disorders, or a similar event – shall be excluded. TTE reserves the right to postpone the delivery or performance by the same period for which the impediment exists, plus an appropriate run-up period, or to rescind the contract in whole or in part with regard to the portion thereof that has not yet been fulfilled. If the impediment lasts longer than three months, the customer is entitled, after an appropriate cure period has been established, to rescind the contract that has not yet been fulfilled. If the delivery period is extended, or if TTE is released from its obligation to perform, the customer shall have no claims to damages as a result.

In the event of acceptance of the goods or the purchase of materials, and the purchase materials shall be charged separately.

If the customer fails to return packaging materials owned by TTE within a time limit to be set by TTE, on the stipulated terms and conditions, and in usable condition, TTE is entitled to bill the customer for the cost of such materials and to demand immediate payment therefor. If the customer furnishes evidence that the damage or loss actually sustained has been significantly below the cost of replacing the materials, the customer shall be required to furnish compensation for the amount of damage or loss actually sustained only. If it has been expressly agreed in writing that the packaging materials become the property of the customer upon provision of the goods, the packaging materials shall be charged separately.

The prices do not include value-added tax at the statutory rate. Such tax shall be stated separately in the invoice at the statutory rate applicable on the date of issue of the invoice.

Deduction of a prompt payment discount (Skonto) requires a separate written agreement.

Unless otherwise agreed in writing, the purchase price shall fall due within 30 days as from the date of the invoice. Invoices shall be issued on the date at which the goods are delivered and any costs shall apply to the consequences of delays and default in payment, particularly with regard to the rights of TTE to demand default interest and to rescind the contract.

Checks and bills of exchange are accepted only by prior agreement.

Version 1 • valid from 1. April 2012
The customer shall have no right of setoff except if its counterclaims have been discharged by the latter in full. Furthermore, the customer is permitted to exercise a right of withdrawal only insofar as its counterclaim is based on the same contractual relationship.

TTE is permitted to terminate contracts regarding successive deliveries (Sukzessivlieferverträge), such as contracts for delivery in installments and supply contracts, with immediate effect at any time provided that it has good cause to do so. Such good cause is deemed to exist, in particular, if the customer has committed a breach of contract that is severe and irreparable or constitutes an ongoing breach or that, while not irreparable, has not been cured within an appropriate period of time, or if the breach of contract is so material that TTE is justified, initiated with regard to the customer’s assets or the initiation thereof is demonstrably impending, or if the customer has been dissolved. Any and all claims of TTE on the customer that are still outstanding at that time shall fall due immediately and any and all deferral agreements shall cease to be valid.

IV. Warranty; liability

The customer’s claims regarding defects presuppose that the customer has complied with its statutory obligations to inspect the goods and complain of any defects therein (§§ 377, 381 Par. 2 HGB). Complaints with regard to discrepancies in quantity in the delivery or outwardly identifiable defects in the goods must be submitted to TTE in writing no later than seven days after delivery of the goods. If such a defect becomes apparent later, the customer is required to provide written notice thereof within seven days as from the time at which the defect becomes apparent. If a complaint is not issued in due time, the delivery is deemed to have been accepted. In the event of confirmed complaints regarding defects, the customer’s claims shall initially be limited to a cure. If the cure fails, the customer is entitled, at its option, to demand rescission or a reduction in price (Minderung).

Informational notices and advice provided by employees or agents of TTE are provided to the best of our knowledge and ability, but are non-binding and subject to change.

TTE is liable pursuant to the statutory provisions if and insofar as the customer asserts claims for damages or reimbursement for expenditures (hereinafter “claims for damages”) based on intent or gross negligence, including intent or gross negligence on the part of representatives of TTE or agents in the performance of TTE’s contractual obligations (Erfüllungsgehilfen) or TTE has culpably violated an essential contractual obligation, in cases involving loss of life, bodily injury, or impairment of health, or insofar as TTE is liable pursuant to the Product Liability Act (Produkthaftungsgesetz) [Product Liability Act].

In particular, the customer is obligated to obtain adequate insurance coverage for the goods, at its own expense, against damage and loss due to fire, water, and theft, up to the replacement value thereof, and to perform any and all necessary service, maintenance, and inspection work in due time and at its own expense. In the case of distrust or other third-party interventions before title to the goods has been transferred in full, the customer is required to notify TTE in writing without delay. If and insofar as the third party in question is not able to reimburse TTE for the in-court and out-of-court costs of a legal action brought with regard to unlawful distrain or other interventions, the customer is liable for the difference.

Resale of the goods supplied, where such resale involves the use of packaging materials owned by TTE, requires TTE’s prior written consent.

The customer is entitled to resell the goods in the ordinary course of its business; the customer does, however, assign to TTE, already at this time, all claims accruing to the customer vis-à-vis its own customers or third parties as a result of the resale, regardless of whether the goods were resold without being processed or after processing. The customer remains authorized and entitled to collect on such claims even after the assignment. Nothing herein shall affect TTE’s authority to collect on such claims itself. TTE does, however, agree not to collect on such claims as long as the customer meets its payment obligations out of the proceeds collected and does not fall into default of payment, and, in particular, as long as no application for initiation of insolvency proceedings has been filed and payments have not been stopped. If, however, this is the case, TTE is permitted to demand that the customer furnish notice of the claims assigned and the debtors associated with such claims, provide all of the information necessary to collect on such claims, turn over the associated documentation, and notify its customer of the assignment.

The value of items of security that have been furnished exceeds the claims to be secured by more than 10%, TTE is obligated to release items of security of its own choosing.

In the event that the customer engages in conduct in breach of contract, particularly in the event of default in payment, TTE is entitled to take back the goods. Such action shall be deemed to constitute rescission of the contract. After taking back the object of delivery, TTE is authorized and empowered to dispose thereof. Any proceeds of such disposal shall be offset against the payment obligations of the customer, less an appropriate sum as costs of the disposal.

If the goods are processed or inseparably combined with other objects that do not belong to TTE, TTE shall acquire partial title to the new item in proportion to the value of TTE’s goods (final invoiced sum, including value-added tax (VAT)) to the value of the other items processed or combined. In the event of distrust or other items, the item created through such processing or combination is subject to the same provisions as apply to the goods supplied with reservations. If the processing or combination takes place such that the customer’s item is to be considered the main item, it is deemed agreed that the customer grants proportional shared ownership thereof to TTE and holds the shared property thereby created in custody for TTE.

VI. Place of performance; place of jurisdiction; governing laws

Wuppertal is the place of performance for deliveries and payments and, if and insofar as the customer is a business entity (Kaufmann), is the place of jurisdiction for all disputes arising in connection with the contractual relationship. TTE is, however, entitled to file legal action against the customer in the customer’s general place of jurisdiction (allgemeiner Gerichtssitz).


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