

# Terms of sale

## Article 1 Scope

1.1 The following terms of sale shall apply for contracts (hereinafter "Contracts") concluded between SPERLI GmbH (hereinafter "SPERLI") and the Customer relating to the purchase of goods, insofar as the Customer is an entrepreneur in the sense of Article 14 of the German Civil Code (BGB). They shall also apply for all future business relations, until the inclusion of updated terms of sale, even if they have not been expressly agreed again. Deviating conditions issued by the Customer, which have not been expressly recognised by SPERLI, shall be non-binding, even if SPERLI does not expressly contradict them.

1.2 The following terms of sale shall also apply if SPERLI accepts the Customer's order despite being aware of the the Customer's conflicting or deviating conditions.

1.3 Insofar as SPERLI and the Customer have made effective individual deviating agreements in relation to a Contract, which are contrary to the following provisions, these shall take precedence over these present terms of sale.

## Article 2 Offer / prices / security deposit

2.1 The Customer shall be bound to offers sent by him for 2 weeks after they are received.

2.2 All prices are net prices excluding value added tax. The Customer shall also pay the respective statutory amount of value added tax. The minimum order value shall be EUR 50.00 per order. For lower order / Contract values we shall also apply appropriate delivery charges.

2.3 The agreed prices shall always apply ex works from SPERLI. The Customer shall also pay for transport costs, costs for packaging which exceed those for standard commercial packaging, public fees and customs duties.

2.4 SPERLI shall be entitled to perform or render outstanding deliveries only against advance payment or security deposit, if after the Contract's conclusion SPERLI should become aware of circumstances, which are likely to substantially reduce the Customer's creditworthiness and due to which the Customer's payment of outstanding claims made by SPERLI for the respective contractual relationship are jeopardised.

## Article 3 Delivery

3.1 The start date and compliance with agreed delivery obligations shall require the Customer to meet fully in advance any obligations of cooperation and to comply with all payment terms that are to be fulfilled prior to any delivery taking place. Unless these conditions are fulfilled, delivery times shall be delayed accordingly, unless SPERLI is solely responsible for the delay.

3.2 Adherence to delivery dates shall be subject to correct and timely self-delivery. SPERLI shall inform the Customer of any anticipated delays as soon as possible.

3.3 Delivery times shall increase whenever non-compliance with them results from cases of force majeure beyond SPERLI's control, e.g. war, import and export restrictions, labour disputes (including SPERLI's suppliers), crop failures, etc. or from other circumstances outside of SPERLI's control. SPERLI shall inform the Customer of any anticipated delays as soon as possible

3.4 If events within the meaning of articles 3.2 and 3.3 seriously complicate the delivery or performance of services or make them entirely impossible and the hindrance is not only temporary in nature, SPERLI shall be entitled to withdraw from the Contract as long as SPERLI is not responsible for the events, SPERLI informs the Customer at once and refunds any payments the Customer has already made to SPERLI immediately. Whenever there are hindrances of a more temporary nature, delivery or performance times shall be delayed or postponed by the duration of the hindrance plus a reasonable start-up period. In as far as it is unreasonable for the Customer to accept the delivery or performance of the service due to the delay, the Customer shall have the right to withdraw from the Contract by means of an immediate written notice to SPERLI. Apart from that the Customer shall only have the right to withdraw from the Contract on the grounds of a delivery delay, if SPERLI itself is responsible for the delivery delay. Furthermore, compensation claims arising from delays shall be subject to the restrictions set out in article 8.

3.5 Partial deliveries and corresponding partial settlements shall be permissible, unless they are unreasonable for the Customer.

3.6 Excess or short deliveries in standard industry amounts (up to 2% of the quantity ordered) are allowed, unless the excess or short delivery is unreasonable for the Customer.

## Article 4 Shipment / transfer of risk / delivery times / examination and complaint obligations

4.1 Delivery shall be ex works, the dispatch and transport shall be at the Customer's own risk. The risk shall be transferred to the Customer as soon as the consignment has been handed over to the person performing the transport, even if only a partial delivery is made. If acceptance is to take place, it shall be decisive for the transfer of risk. The Customer may not refuse a required acceptance where only minor defects are present.

4.2 If the shipment of the delivery is delayed or acceptance does not take place for reasons that fall under the Customer's area of risk, any risk of accidental deterioration and loss shall be transferred to the Customer upon notification of dispatch or acceptance readiness. Storage costs after the transfer of risk shall be borne by the Customer. Any additional claims shall remain unaffected.

If goods are to be shipped, delivery times and dates shall refer to the time when the goods are made ready for the hand over to the carrier, freight forwarder or other third parties responsible for the transportation of the same.

4.4 SPERLI shall be entitled to exceed the agreed delivery dates by up to 14 days, if the delivery is scheduled to be made more than six weeks after the Contract's conclusion.

## Article 5 Payment / settlement / transfer / reciprocal rights

5.1 Payments must be made net within 30 days of the invoice date. No further discounts shall be granted. Timeliness of payment shall be determined by the time when the money arrives in SPERLI's account. Payments must be made to the account specified in the invoice.

5.2 SPERLI shall be entitled to demand default interest at the legal rate from the moment the default occurs, without prejudice to the possibility of asserting claims for higher actual damages.

5.3 The assignment of claims against SPERLI to third parties shall be excluded. Article 354 a of the German Commercial Code (HGB) shall remain unaffected.

5.4 The withholding or offsetting of payments because of counter claims by the Customer shall only be permitted, if these counter claims are undisputed or have been recognised by a declaratory judgement.

## Article 6 Reservation of title

6.1 All delivered goods shall remain the property of SPERLI (hereinafter "Reserved Goods") until all claims arising from the legal relationship upon which the delivery is based have been fulfilled.

6.2 The Customer shall only be entitled to sell on Reserved Goods within the framework of normal business operations and as long as the Customer is not in default. Any other disposal of Reserved Goods shall not be permitted. Where third parties have seized or gained other access to the Reserved Goods, SPERLI must be informed immediately. All intervention costs shall be borne by the Customer, insofar as they cannot be recovered from the third party. If the Customer grants his buyer a respite for the payment of the purchase price, the Customer must reserve right of ownership to the Reserved Goods at the same conditions under which SPERLI has reserved ownership at the time of the delivery of the Reserved Goods. Otherwise, the Customer shall not be authorised to resell.

6.3 The Customer's claims from the resale of Reserved Goods shall hereby already be assigned to SPERLI. SPERLI shall hereby already accept the assignment. The assigned claims shall serve as security to the same extent as the Reserved Goods. The Customer shall only be entitled and authorised to resell, if it is ensured that any claims to which the Customer is entitled as a result shall be assigned to SPERLI.

6.4 The Customer shall be authorised until revocation to collect the claims assigned to SPERLI. SPERLI shall be entitled to revoke the order, if the Customer fails to fully meet the payment obligations resulting from the business relationship with SPERLI. Where there are conditions present for exercising the right of revocation, the Customer shall on SPERLI's request immediately declare the assigned claims and their debtors, provide all of the information required for the collection of these claims, hand over the necessary documentation to SPERLI and notify debtors of the assignment of said claims. SPERLI shall also be entitled to notify debtors of the assignment itself.

6.5 If SPERLI asserts the reservation of the title, this shall only constitute a withdrawal from the Contract, if SPERLI expressly declares it to be so in writing. The Customer's right to possess the Reserved Goods shall lapse, if the Customer fails to meet the obligations arising from this Contract. The opening of insolvency proceedings regarding the Customer's assets or the refusal to open such due to a lack of assets shall entitle SPERLI to cancel the Contract with immediate effect and to demand the return of the deliveries.

## Article 7 Guarantee

7.1 Any information given about SPERLI's products, in particular the illustrations, drawings, data on weights, dimensions and specifications contained in offers or catalogues shall not constitute a quality guarantee but shall act merely as a description or characterisation of the goods.

7.2 In the case of justified and punctual complaints SPERLI shall address these shortcomings in the way of supplementary performances by SPERLI either by rectifying the defect or delivery of defect-free goods. In doing so, SPERLI is entitled to deliver comparable goods, e.g. a different type, as far as this is reasonable for the Customer. SPERLI shall only assume the costs required for the purpose of supplementary performances. Defective goods must be returned to SPERLI in the original or equivalent packaging for verification, whether a claim under warranty exists.

7.3 SPERLI shall be entitled to refuse supplementary performances in accordance with statutory provisions. Supplementary performances may also be denied, if the Customer does not send the rejected goods to SPERLI upon SPERLI's request.

7.4 The limitation period for claims based on defects, with the exception of, firstly, claims for damages, which in turn as a whole shall be subject to the restrictions set out in article 8 and, secondly, other claims in accordance with Articles 438 Section 1 no. 1, 438 Section 1 no. 2 or 479 Section 1 of the BGB, shall be 12 months.

7.6 Otherwise the statutory provisions of the BGB and of the HGB, including Article 377 of the HGB, shall apply.

## Article 8 Liability

8.1 SPERLI's liability for damages relating to breaches of its own obligations or by those attributable to it due to slight negligence shall be excluded. SPERLI's liability for claims arising due to its own grossly negligent breaches of duty or by those attributable to it shall be limited to contract-typical damage, which SPERLI had to reckon with at the conclusion of the Contract on the basis of the circumstances known to it at that time. SPERLI shall only be liable for damages amounting to up to 5% of the remuneration agreed with SPERLI.

8.2 All damage claims against SPERLI, irrespective of the legal reason, become time-barred within one year from the delivery of the goods to the Customer, in the case of tortious liability from the time of knowing or grossly negligent ignorance of the circumstances substantiating the claim and the person liable to pay compensation.

8.3 The restrictions arising from articles 8.1 and 8.2 shall not apply to claims made under the product liability law, in case of injury of life, body or health, in the event of assumption of a guarantee or a violation of essential contractual obligations, i.e. such that are the basis for the Contract's due and proper fulfilment and on the fulfilment of which the Customer may regularly trust. Furthermore, the limitations in articles 8.1 to 8.2 shall not apply in the case of liability for willful intent and (with the exception of article 8.1 section 2) for gross negligence.

## Article 9 Rights of use / consulting services / return rights

9.1 The use of SPERLI brands, trademarks and symbols requires SPERLI's written consent.

9.2 Unless expressly agreed otherwise consultations in connection with the goods, e.g. in relation to resistances, planting and storage etc., are not subject of the Contract. As far as information is made available on this subject, it shall be non-binding.

9.3 If and as far as return rights have been contractually agreed with the Customer, these rights shall be excluded where products have been damaged, stickers or labels have been applied.

## Article 10 Materials for display stands

Any display stands made available to the Customer by SPERLI shall not have been purchased by the Customer but remain the permanent property of SPERLI. The Customer is obliged to treat the display stands with care and to return them to SPERLI within six months after receiving written notice to do so by SPERLI and in any event upon termination of the contractual relationship.

## Article 9 Place of jurisdiction / applicable law

11.1 The exclusive place of jurisdiction for all disputes arising directly or indirectly from the Contract shall be SPERLI's company seat. SPERLI, however, shall be entitled to sue the Customer in the Court that has jurisdiction over the Customer's company headquarters.

11.2 Place of performance for deliveries and payments shall be Everswinkel, Germany.

11.3 The language of the Contract shall be German. Explanations given on the basis of these terms as well as Contracts concluded under them are governed by the laws of the Federal Republic of Germany under exclusion of the Vienna Convention on the International Sale of Goods of 11 April 1980 (CISG). Conflicts-of-law rules that may lead to the application of other legal systems shall, as far as legally permissible, be excluded.