

# General Terms and Conditions of Delivery and Sale of Messrs. GRIMM Aerosol Technik GmbH & Co. KG

## I. General Conditions

Regarding the scope of deliveries or services (in the following referred to as "deliveries") the reciprocal written declarations apply. General Terms and Conditions of the buyer only apply to the extent that GRIMM (in the following referred to as "supplier") expressly agreed to them in writing. For installation and commissioning work the Conditions for Installation and Commissioning of the supplier apply in addition.

## II. Contractual Declarations, Contract Adaptations

Quotations by the supplier are subject to confirmation; a contract comes into effect only, if the supplier provides an order confirmation in writing (§ 126 b, German Civil Code) or if the order has been executed by the supplier. Modifications, amendments and / or the annulment of a contract or of these terms and conditions have to be made in writing as well. Specifications in catalogs, leaflets and the like have relevance only, if they are expressly referred to in the order confirmation. For orders with a value of less than EUR 200,-, a markup for small-volume purchases will be made. Without the express approval of the supplier, no quotation and project documents may be copied or made available to third parties. They remain property of the supplier and have to be returned at any time, if so requested by the supplier.

## III. Prices

All prices are prices in EURO, ex works or ex warehouse of the supplier, respectively, packing not included. The VAT (where applicable) in the amount prescribed by law on the date of the performance (for down-payments: on the date of payment) will be added to the invoice amount. Prices for deliveries abroad do not include any VAT, customs duties or other import duties; these have to be borne by the buyer. If, in exceptional cases, the supplier agreed to bear such costs at fixed rates, possible cost increases - for instance due to legal changes - are to be borne by the buyer. In case of deviations in the order from the quotation, the supplier reserves the right for price changes. Prices are based on the material and labor costs at the time of the first quotation. Changes of such costs until the time of delivery entitle the supplier to adapt his prices accordingly. Discounts are applied to the net value of the goods. If several discounts were agreed upon, they are applied to the balance value.

## IV. Delivery

The agreed term for the delivery starts with the date of the order confirmation, however, not before the buyer fulfilled all advance performances to be provided by same. The delivery time stated in the order confirmation is to be considered tentative only, unless a binding delivery date was expressly confirmed in writing. Governmental or other approvals or

licenses in the buyer's country required for the delivery will postpone the start of the agreed delivery term to the date on which such approvals or licenses have been obtained. They are to be obtained by the buyer in his country and at his own cost. Obligations to supply and delivery terms are suspended as long as the buyer is in arrears. The supplier is entitled to effect partial or advance deliveries and to invoice same. The agreed delivery times are subject to unpredictable impediments or impediments independent from the intentions of the parties, such as war, riots, mobilization, natural disasters, state or government encroachments, bans or embargoes, shortages of energy or raw materials, strikes, lockouts, transport damages or delays, etc. The supplier is also entitled to postpone the delivery date, if his sub-suppliers suffer from such impediments. If the shipment of goods that are ready to be shipped is not possible or not desired by the buyer, these goods can be put in storage at the buyer's cost and risk. In this case, delivery is considered as having been effected. Compensation for late deliveries will be granted only, if same was laid down in a separate agreement and even if the supplier is in default compensation is limited to the amount of the penalty agreed; however, in any case the maximum penalty will not exceed 0.5% per week of delay and will be limited to a maximum of 5% of the net value of the goods for the part of the delivery still due at the time the default comes into effect.

## V. Fulfillment and Passing of Risks

Unless agreed differently, costs and risks are passed on from the supplier to the buyer once the goods have left the works or the warehouse of the supplier. This also applies in case of installation / commissioning at the buyer's location or if the transport was arranged by the supplier. If the delivery is delayed by the buyer, costs and risks are passed on to same upon advice of the readiness of shipment. All time periods set by the supplier for the fulfillment of the contract by the buyer are triggered by these dates, regardless of any reserved quality checks or test runs.

## VI. Payment

Unless stated differently in the order confirmation, the sales price is to be paid within 30 days from the invoice date without deduction. Lacking any separately agreed payment terms, order amounts in excess of EUR 10,000.00 are payable as follows: 1/3 of the invoice amount upon receipt of the order confirmation, 1/3 once half of the delivery time has passed and 1/3 with delivery. In case of partial invoices the corresponding partial payments become due with receipt of the respective invoice. This also applies to payments to be made for supplementary deliveries or other agreements in excess of the original contract / order amount and independent from the payment terms agreed upon for the main delivery. Down-payments and interim payments will not be paid interest on. Payments are to be effected without deduction and in the agreed currency to the

supplier's designated account(s). The acceptance of checks or bills of exchange is on account of payment only; all connected expenses, costs, and / or fees will be borne by the buyer. For all types of payment, the settlement date is the date on which the supplier has unrestricted and undisputed use of the amount. In case of a missed payment deadline, the consequences for default are automatically invoked without the need for a specific reminder. The buyer is not entitled to withhold payments or offset claims for warranty or any other counter-claims. In case of a late payment, the supplier is entitled to

- a) suspend the fulfillment of obligations on his side until the payment due has been received
- b) invoice all open amounts for immediate payment
- c) invoice interest on arrears in the amount of 5% above the discount rate of the German National Bank
- d) withdraw from the contract after a reasonable grace period

#### **VII. Retention of Title**

Until all receivables from the business relation have been settled, the sold goods remain the property of the supplier. If the buyer on his part resells the goods without having paid same in advance or concurrently with the receipt of the goods, he is obliged to stipulate a Retention of Title conforming with these conditions. The buyer cedes all his claims from such a resale as well as the rights on the Retention of Title with his customer to the supplier. Upon request of the supplier, he is obliged to inform his customer of this cession, to provide the supplier with all information and to hand over all documents the supplier requires to assert his claims vis-à-vis the buyer's customer. The buyer is entitled to collect receivables from this resale despite the cession only, as long as he properly fulfills his obligations vis-à-vis the supplier. The buyer is obliged to inform the supplier without delay of any garnishment or other court orders or claims of third parties regarding the goods subject to retention of title. In case of breaches of duty by the buyer, in particular in case of delayed payments, the supplier is entitled to withdraw from the contract and to recall the goods subject to retention of title after the unsuccessful expiration of a reasonable deadline set for the performance by the buyer; the legal requirements regarding the dispensability of setting a deadline remain unaffected. The buyer is obliged to return the goods. Possible costs of a collection procedure will be borne by the buyer. At his own expense, he will take all necessary measures to prevent all impairment or loss of the supplier's rights with regards to the delivered items or the new goods. In case the buyer fails to meet his obligations the supplier is entitled to damages.

#### **VIII. Warranty**

In the absence of any other agreement, the warranty period is 12 months starting with the transfer of risks. The same applies to goods or services delivered that are firmly connected to immovable objects. Warranty claims can be accepted only, if the emerged defect is reported in writing without delay; warranty is limited to cure by rectification or replacement of the defective goods or parts. All other costs incurred in

connection with such rectification will be at the expense of the buyer. Excluded from the warranty are defects caused by the improper or other than the intended use or resulting from the non-observance of operating instructions or other instructions provided by the supplier. For goods manufactured based on the buyer's design, drawings, models or other specifications, the warranty extends to the agreed scope of manufacture only. Occurrences resulting from normal wear and tear do not represent any defect. The warranty is voided, if the buyer himself effects any modifications or repairs or has them effected by third parties without the prior written authorization by the supplier. Resulting invoices will not be accepted. The performance of work under warranty does not extend the original warranty period.

#### **IX. Liability**

Liability in compliance with the Product Liability Act is excluded, if operating instructions, other instructions, warnings or safety advice of the supplier are not observed. Outside the scope of application of the Product Liability Act, warranty claims can be made in case of wanton or gross negligence by the supplier and for personal injuries and direct damage to property by the product only. Any further claims, in particular claims for consequential damages or financial losses are expressly excluded. Such other claims have to be made in writing within 6 months from the date on which the defect occurred; latest, however, two years after delivery. These limitations of liability have to be conferred upon customers of the buyer in full.

#### **X. Withdrawal from the Contract**

The buyer is entitled to withdraw from the contract, if, due to gross negligence of the supplier and despite a written respite, the delivery is delayed by more than 90 days. Apart from the case of delayed payment as per VI. d) the supplier is entitled to withdraw from the contract, if

- a) the delivery or performance becomes impossible for reasons the buyer is accountable for or will be delayed for a longer time period than a reasonable respite to be given in writing
- b) since the time of order the solvency of the buyer considerably deteriorated and same is neither prepared to make an advance payment, nor to provide proper securities. A withdrawal for the above reasons can also be declared with regards to a part of the delivery or performance still pending.

If, due to one of the reasons listed in IV., the originally agreed delivery time is extended by more than half but at least by 6 months, each party to the contract may declare its withdrawal from the part of the delivery or performance that is still pending.

If an insolvency proceeding is opened on the assets of one party to the contract or is not opened due to insufficient funds, the other party to the contract may declare its withdrawal from the contract with immediate effect. In case of a withdrawal for reasons other than the first one listed under X., performances or partial deliveries already provided are to be invoiced and settled, notwithstanding claims for damages by the supplier.

The same applies, if the delivery or performance was not yet taken over by the buyer as well as for preparatory work already done by the supplier. Alternatively, the supplier is entitled to demand that the goods already delivered be returned. Any other consequences of a withdrawal from the contract are excluded.

**XI. Industrial Property Rights and Copyrights; Defects of Title**

If any goods are manufactured based on the design, on drawings, models, or other specifications from the buyer, same will undertake to indemnify and hold harmless the supplier in case of any property rights infringements. The supplier reserves his unrestricted property rights and copyrights for all quotations, drawings, samples, leaflets, pictures, illustrations and any other documents - including those in their electronic form - (in the following referred to as "documents"). These documents must not be made available to third parties without the prior authorization of the supplier and have to be immediately returned upon demand, if the order is not placed with the supplier. Phrases 2 and 3 respectively apply to the documents of the buyer; however, these may be made available to those third parties that have been rightfully involved by the supplier in the execution of the order.

In the absence of any other agreements, in particular the stipulations of the GRIMM software license, the buyer obtains for the standard software released to him by the supplier within the scope of the contract fulfillment an indefinite, single user license restricted to be used with the contractual products and on one PC only. The mandatory legal regulations of §§ 69 c and

d UrhG (German Copyright Law) remain unaffected.

Apart from this, the supplier transfers rights of utilization of the property rights on the contractual products only to the extent it is absolutely necessary to fulfill the intent of the contract. Claims for damages by the buyer are subject to the stipulations under IX. They are excluded, if the buyer is accountable for the infringement of the property rights, in particular if the infringement of the property rights is caused by specifications given by the buyer, by an application not predictable by the supplier or by the fact that the delivery is modified by the buyer or used together with products not delivered by the supplier. In case of property rights' infringements, the supplier has to be given the opportunity to obtain the required property rights within a reasonable time period first. Any further or other claims of the buyer against the supplier or his vicarious agent for defect of title are excluded.

**XII. Place of Jurisdiction, Applicable Law, Language**

Place of jurisdiction for all disputes arising from the contract is the German court competent for the location of the supplier's head office. However, the supplier is also entitled to bring an action against the buyer at the latter's head office. The parties may agree on the settlement by a court of arbitration. If different interpretations of these General Terms and Conditions of Delivery and Sale are possible due to versions in different languages, the German version will be the binding one. The contract is subject to German Law. It is agreed that the application of the UNCITRAL Convention of the United Nations on Contracts for the International Sale of Goods (CISG) is excluded.