

## **TERMS AND CONDITIONS**

### **1. Interpretation**

1. The definitions and rules of interpretation in this condition apply in these conditions.
2. A 'day(s)' means any day other than a Saturday, Sunday or German public holiday.
3. 'Buyer, 'You' and 'Your' is the person, or business, who purchase the Goods from the Company
4. 'Us', 'We', 'Company' is Fox Trading GmbH of Heiligenhäuschenweg 66, 33378, Rheda-Wiedenbrück, Germany
5. Contract: any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these conditions
6. The Headings in these Terms and Conditions are for convenience only and will not affect their interpretation.
7. Words imparting the singular number include the plural and vice-versa.
8. 'Section' is preceded by a number and refers to the Heading under which the individual and collective terms are stated.
9. 'Sub-section' is preceded by a reference containing more than one (1) character and refers to the individual and collective terms under each Section. i.e. 1.1, 1.2, 1.3 etc.

### **2. Application and entire agreement**

1. These Terms and Conditions will apply to the purchase of the goods detailed in our quotation (**Goods**) by the buyer (**you**) from Fox Trading GmbH of Heiligenhäuschenweg 66, Rheda-Wiedenbrück, Germany, 33378 (**we** or **us**).
2. These Terms and Conditions will be deemed to have been accepted by you when you accept them or the quotation or from the date of any delivery of the Goods (whichever happens earlier) and will constitute the entire agreement between us and you.
3. These Terms and Conditions and the quotation (together, the Contract) apply to the purchase and sale of any Goods between us and you, to the exclusion of any other terms that you try to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

### **3. Goods**

1. The description of the Goods is set out in our sales documentation, unless expressly changed in our quotation. In accepting the quotation, you acknowledge that you have not relied upon any statement, promise or other representations about the Goods by us. Descriptions of the Goods set out in our sales documentation are intended as a guide only.
2. We can make any changes to the specification of the Goods which are required to conform to any applicable safety or other statutory or regulatory requirements.
3. All Goods are supplied for use by the Buyer and are not for onward sale. If the Buyer intends to sell the Goods on or to export or otherwise distribute the Goods, the Buyer:

1. warrants to the Company that it has the legal right to sell on those Goods in the relevant jurisdiction;
2. warrants to the Company that it will act in full compliance with all applicable laws and regulations (including but not limited to customs controls and authorisations) if it intends to sell, distribute and/or export any of the Goods;
3. warrants to the Company that it will not infringe the rights of any third parties in its sale, distribution or export of the Goods under any applicable laws and regulations including but not limited to any trade mark infringement or similar rights in any applicable jurisdiction;
4. shall indemnify and hold the Company harmless in respect of any claims, costs, losses, expenses or other sums incurred by the Company (including all legal costs and expenses) which are directly or indirectly incurred as a consequence of any breach by the Buyer of the undertakings to the Company or any claim by a third party that the sale, distribution or export of the Goods infringes the intellectual property rights of that third party; and
5. shall notify the Company in writing to its registered office (marked for the attention of the Managing Director) in the event of any third party notification of any complaint or claim relating to the alleged infringement of intellectual property rights within FORTY-EIGHT (48) hours of receipt by the Buyer.

## **4. Price**

1. The price (Price) of the Goods is set out in our quotation current at the date of your order or such other price as we may agree in writing.
2. If the cost of the Goods to us increases due to any factor beyond our control including, but not limited to, material costs, labour costs, alteration of exchange rates or duties, or changes to delivery rates, we can increase the Price prior to delivery.
3. Any increase in the Price under the Sub-section 4.2, will only take place after we have agreed with you in writing.
4. Should an agreement, in writing, on the price increase not be made between the Company and the Buyer, the Company has the right to withdraw any, or all, Goods from the contract, without any liability to the Buyer. Including direct or indirect costs incurred through cancellation of the contract, such as loss of future revenue, material costs, labour costs, advertisement costs, costs of replacing the goods.
5. The Price is exclusive of any applicable VAT and other taxes or levies which are imposed or charged by any competent authority.

## **5. Cancellation and alteration**

1. Details of the Goods as described in the clause above (Goods) and set out in our sales documentation are subject to alteration without notice and are not a contractual offer to sell the Goods which is capable of acceptance.
2. The quotation (including any non-standard price negotiated in accordance with the clause on Price (above) is valid for a period of 5 days only from the date shown in it unless expressly withdrawn by us at an earlier time.
3. We can cancel the order for any reason prior to your acceptance (or rejection) of the quotation.
4. Any cancellations by you must be made in writing within 48 hours of an order being received by us.

## 6. Payment

1. We will invoice you for the Price either:
  1. on or at any time after acceptance by both parties of the order of the Goods; or
  2. where the Goods are to be collected by you or where you wrongfully do not take delivery of the Goods, at any time after we have notified you that the Goods are ready for collection or we have tried to deliver them.
2. You must pay the Price within 2 days of the date of our invoice or otherwise according to any credit terms agreed between us.
3. All payments must be made in Euro (€ / EUR) unless otherwise agreed in writing between us.
4. You must make payment even if delivery has not have taken place and / or that the title in the Goods has not passed to you.
5. If you do not pay within the period set out above, we will suspend any further deliveries to you and without limiting any of our other rights or remedies for statutory interest, charge you interest at the rate of 8% per annum from time to time above the base lending rate of the European Central Bank, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the European Commission Directive 2011/7/EU Late Payment Directive. Time for payment will be of the essence of the Contract between us and you.
6. The Buyer must pay all amounts due under these Terms and Conditions in full without any deduction or withholding, except as required by law and is not entitled to assert any credit, set-off or counterclaim against the other in order to justify withholding payment of any such amount in whole or in part.
7. The Buyer agrees that, in respect of the Buyer (and, if the Buyer is a sole trader or partnership, the principal or partners), the Company shall have the right to:

(a) exchange information with other companies and organisations for the purposes of fraud protection and credit risk reduction; and

(b) undertake credit reference searches with one or more credit reference agencies, who will retain a record of that search and will share that information with others conducting searches.

## 7. Delivery

1. . Delivery of the Goods shall take place at the Company's place of business (ex-works Rheda-Wiedenbrueck)
2. We will arrange for the delivery of the Goods to the address specified in the quotation, or your order or to another location we agree in writing.
3. Where the Company arranges carriage via its authorised carriers to the Buyer's premises or other nominated point for delivery, the **Buyer** shall insure the Goods in transit. The Company has no responsibility to insure the goods.
4. Subject to the specific terms of any special delivery service, delivery can take place at any time of the day and must be accepted at any time.
5. The Buyer shall take delivery of the Goods within five (5) days of the Company giving it notice that the Goods are ready for delivery.
6. Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

7. Subject to the other provisions of these conditions, the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds ninety (90) days.
8. If for any reason, unless agreed in writing between you and the Company, you do not take delivery of the Goods within the terms according to section 7, we may, at our discretion and without prejudice to any other rights:
  1. store or arrange for the storage of the Goods and will charge you for all associated costs and expenses including, but not limited to, transportation, storage and insurance; and / or
  2. make arrangements for the redelivery of the Goods and will charge you for the costs of such redelivery; and/or
  3. after 10 days, resell or otherwise dispose of part or all of the Goods and charge you for any shortfall below the price of the Goods.
  4. pass risk in the Goods to the Buyer (including for loss or damage caused by the Company's negligence)
9. We can deliver the Goods by installments, which will be invoiced and paid for separately. Each installment is a separate contract. Any delay in delivery or defect in an installment will not entitle you to cancel any other installment.

## **8. Non-Delivery**

1. The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary to the Company's satisfaction.
2. The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within two (2) days of the date when the Goods would in the ordinary course of events have been received by the Buyer.
3. Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised by the Buyer for such Goods.

## **9. Inspection and Acceptance of Goods**

1. Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.
2. You must inspect the Goods on delivery or collection.
3. Other than by agreement, we will only accept returned Goods if we are satisfied that those Goods are defective and if required, have carried out an inspection.
4. Subject to your compliance with this clause and/or our agreement, you may return the Goods and we will, as appropriate, repair, or replace, or refund the Goods or part of them.
5. We will be under no liability or further obligation in relation to the Goods if:
  1. if you fail to provide notice as set above; and/or

2. you make any further use of such Goods after giving notice under the clause above relating to damages and shortages; and/or
  3. the defect arises from normal wear and tear of the Goods; and/or
  4. the defect arises from misuse or alteration of the Goods, negligence, wilful damage or any other act by you, your employees or agents or any third parties.
6. The cost of returning the Goods will be met by the Company, provided that either the Company arranges collection via its nominated carrier or, if the Buyer prefers to arrange the return, the Company has given its prior written approval to the cost of the Buyer's chosen return method
7. Acceptance of the Goods will be deemed to be upon inspection of them by you and in any event within 3 days after delivery.

## **10. Risk and title**

1. The risk in the Goods will pass to you on completion of collection, or delivery to your designated delivery address, or in the case the Buyer fails to accept delivery in accordance with the terms stated in Section 7.
2. Title to the Goods (Ownership) will not pass to you until we have received payment in full (in cleared funds) for: (a) the Goods and/or (b) any other goods or services that we have supplied to you in respect of which payment has become due including costs incurred by the company under the terms in Section 7.
3. The Buyer's right to possession of the Goods shall terminate immediately if:

(a) the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors, or enters into liquidation except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

(b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts, or the Buyer ceases to trade.

4. As long as the Goods have not been resold, or irreversibly incorporated into another product, and without limiting any other right or remedy we may have, we can at any time ask you to deliver up the Goods and, if you fail to do so promptly, enter any of your premises or of any third party where the Goods are stored in order to recover them.

## **11. Termination**

1. We can terminate the sale of Goods under the Contract where:
  1. you commit a material breach of your obligations under these Terms and Conditions;

2. you are or become or, in our reasonable opinion, are about to become the subject of a bankruptcy order or take advantage of any other statutory provision for the relief of insolvent debtors.

## 12. Limitation of liability

1. Our liability under the Contract, and in breach of statutory duty, and in tort, misrepresentation or otherwise will be limited to this clause.
2. Subject to the clauses above on **Inspection and Acceptance** and **Risk and Title**, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
3. If we do not deliver the Goods, our liability is limited, subject to the clause below, to the costs and expenses incurred by you in obtaining replacement goods, by another Supplier approved by us, of similar description and quality in the cheapest market available, less the price of the Goods.
4. Our total liability will not, in any circumstances, exceed the total amount of the Price payable by you.
5. We will not be liable (whether caused by our employees, agents or otherwise) in connection with the Goods, for:
  1. any indirect, special or consequential loss, damage, costs, or expenses; and/or
  2. any loss of profits; loss of anticipated profits; loss of business; loss of data; loss of reputation or goodwill; business interruption; or, other third party claims; and/or
  3. any failure to perform any of our obligations if such delay or failure is due to any cause beyond our reasonable control; and/or
  4. any losses caused directly or indirectly by any failure or breach by you in relation to your obligations; and/or
  5. any loss relating to the choice of the Goods and how they will meet your purpose or the use by you of the Goods supplied.
6. The exclusions of liability contained within this clause will not exclude or limit our liability for death or personal injury caused by our negligence; or for any matter for which it would be illegal for us to exclude or limit our liability; and for fraud or fraudulent misrepresentation.

## 13. Communications

1. All notices under these Terms and Conditions must be in writing and signed by, or on behalf of, the party giving notice (or a duly authorised officer of that party).
2. Notices will be deemed to have been duly given:
  1. when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient;
  2. when sent, if transmitted by fax or email and a successful transmission report or return receipt is generated;
  3. on the fifth day following mailing, if mailed by national ordinary mail; or
  4. on the tenth day following mailing, if mailed by airmail.
3. All notices under these Terms and Conditions must be addressed to the most recent address, email address or fax number notified to the other party.

## 14. Force Majeure

1. The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer ) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation: industrial action (whether or not relating to either party's workforce), civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 180 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

## **16. No Waiver**

1. No waiver by us of any breach of these Terms and Conditions by you shall be considered as a waiver of any subsequent breach of the same or any other provision.

## **17. Severance**

1. If one or more of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of these Terms and Conditions (which will remain valid and enforceable).

## **18. Law and jurisdiction**

1. These Terms and Conditions are governed by and interpreted according to German Trade law. All disputes arising under these Terms and Conditions are subject to the exclusive jurisdiction of the place of the Company.