

# General Terms and Conditions of Coolike Regnery GmbH

## - Status: August 2003 -

### 1. General - Scope of validity

1.1 All supplies, services and offers are exclusively based on these General Terms and Conditions. The latter shall thus apply to all present and future business transactions, even if these Terms and Conditions are not explicitly agreed to once again.

1.2 Consumers in the sense of these General Terms and Conditions are natural persons who enter into business relations with us and do not necessarily pursue commercial activities or a professional activity on a self-employed basis.

1.3 Entrepreneurs in the sense of these General Terms and Conditions are natural or legal persons or incorporated companies that enter into business relations with us and pursue commercial activities or a professional activity on a self-employed basis. Customers in the sense of these General Terms and Conditions are both consumers and entrepreneurs.

1.4 Deviating, contradicting and/or supplementary General Terms and Conditions of the company shall not become part of the contract, even if they are known, unless their validity has been expressly agreed in writing. Any reference of the company to its General Terms and Conditions and/or to the use of so-called defensive clauses shall be herewith repudiated.

### 2. Conclusion of contracts

2.1 Our offers are subject to change. The company reserves the right to make technical modifications as well as changes as to the shape, colour and/or weight within the scope of reasonableness.

2.2 By placing an order for goods the customer is deemed to have declared his firm intention to purchase the goods ordered.

We shall be entitled to accept the offer to contract that is deemed to have been made with the order within two weeks after having received the order. The acceptance can either be notified in writing or by supplying the goods to the customer.

2.3 If the consumer places an order electronically, we shall confirm the receipt of the order at once. This confirmation does not represent a binding acceptance of the order, but may come together with a declaration of acceptance.

2.4 The contract shall be concluded subject to the proviso that our suppliers effect their deliveries in a proper and timely fashion. This shall only apply to cases where we are not responsible for the non-delivery, especially when a congruent hedging transaction has been contracted with our supplier.

The customer shall be informed immediately about the non-availability of the service and the consideration shall be returned without any delay.

2.5 If the consumer orders the goods electronically, we shall save the contract text and send it by e-mail to the customer together with these General Terms and Conditions, if we are required to do so.

### 3. Prices

3.1 Our prices are net ex Bensheim works.

The price lists or the offer prices valid at the time of placing the order shall be applicable. The offer prices keep their validity for 8 weeks, beginning on the day of issue. Incidental costs, such as special packaging, freight and insurance, are not included in the prices and shall be charged separately.

3.2 The sales tax (VAT) will be added at the currently valid rate.

### 4. Payment conditions

4.1 Unless anything else to the contrary has been agreed, the purchase price shall be due without any deductions within 30 days after the goods have been received. The invoice shall be issued under the dispatch date of the goods or the partial delivery, respectively. The period of payment commences when the goods have been received or when the invoice has been received at the latest. After this period has expired, the customer is in default of payment.

When being in default of payment, the consumer shall pay interest on the monetary debt at a rate of 5 per cent points above the relevant basic rate of interest.

The entrepreneur shall pay interest on the monetary debt at a rate of 8 per cent points above the relevant basic rate of interest. We shall reserve the right to prove to the entrepreneur an even higher damage caused by delayed performance and assert this claim.

4.2 Checks and bills tendered are deemed to have been accepted as payments only after they have been cashed. The acceptance of bills always requires the prior conclusion of a written agreement. When accepting bills, the discount and collection fees usually charged by the banks shall be claimed and are due in cash at once.

4.3 If we become aware of a considerable deterioration in the customer's financial situation, we shall reserve the right to claim payment of all outstanding invoices, including any current bills. Besides, we shall also reserve the right to suspend the execution of any current order after the expiry of a reasonable deadline and to demand advance payment for executing this order.

4.4 The customer shall only have the right of set-off if his counter-claims have been legally established, if they are undisputed or if they are acknowledged by us. The customer shall be entitled to exercise his right of set-off only to such an extent as his counter-claim is based on the same contractual relations. Collection expenses amounting to € 10,00 per letter shall become due for the 2nd and any subsequent reminder. The right to claim further damages caused by delayed performance shall be reserved.

### 5. Place of performance

The place of performance for supplies and payments is Bensheim.

### 6. Reservation of title

6.1 In the case of contracts with consumers, we shall retain the title to the goods until full payment has been received.

In the case of contracts with entrepreneurs, we shall retain the title to the goods until all accounts receivable from a current business relationship have been settled.

In the case of checks and bills being tendered as a means of payment, this reservation of title exists as long as the supplier can satisfy claims from this mode of payment.

6.2 The customer shall not be allowed to assign the goods as a security or a pledge.

6.3 The customer shall treat the goods carefully. He shall inform us without any delay should a third party try to get access to the goods by way of an attachment or if the goods have been damaged or lost. The customer shall also notify us of any change of ownership of the goods, of his own change of abode or of a change of the company's registered office. Furthermore, the customer shall immediately inform any third party of our reservation of title.

6.4 We shall be entitled to withdraw from the contract, if the customer is found in breach of contract, especially if he is in default of payment or if he violates a duty in accordance with section 3 and 4 of this provision, and we shall be entitled to demand to have the goods returned to us.

6.5 The entrepreneur shall be entitled to resell the goods in the course of a proper business transaction. He assigns herewith to us all accounts receivable up to the amount invoiced which he may claim from a third party as a result of these goods being resold. We accept this assignment herewith. Once the entrepreneur has assigned his claims to us he shall be authorized to collect the accounts receivable. We shall reserve the right to collect these accounts receivable ourselves, should the entrepreneur fail to meet his payment obligations and default on his payments. The customer shall release the collaterals to which he is entitled and at his own choice, if he is requested to do so, when the value of the accounts receivable thus secured and unpaid so far exceeds 20%.

6.6 The goods are always dealt with and processed by the entrepreneur in our name and on our behalf. If the goods are processed with articles and items not owned by us, we shall obtain the co-ownership in the new goods in the proportion of the value of the goods supplied by us to the value of those processed. The same shall apply when the goods are mixed with other articles and items not owned by us.

### 7. E-Commerce contracts and door-to-door business with contestable clause

7.1 The consumer shall have the right to revoke his declaration of intent to conclude the contract within two weeks after the receipt of the goods or after executing the contract. This revocation does not require any reasoning and can be declared to the seller or entrepreneur in writing or by returning the goods; the timely dispatch shall be sufficient to observe the deadline.

We shall reserve the right to supply the goods only after the revocation period has expired.

7.2 The consumer shall return the goods by parcel post, if he wishes to exercise his right of revocation and if he is already in possession of the goods. The postage for returning the goods in the case of exercising the right of revocation shall be borne by the consumer, if the order value does not exceed € 50,00, unless the goods delivered do not conform to the goods ordered. The consumer need not bear the postage for the returned goods if the order value exceeds € 50,00.

7.3 The consumer shall compensate the decrease in value the goods have suffered in accordance with their intended use. The consumer can test and check the goods carefully. The decrease in value caused by the use of the goods in excess of a mere check, resulting in the goods being no longer fit to be sold as 'new', shall be borne by the consumer.

### 8. Transferability

We reserve the right to assign the rights arising from these contracts to third parties after prior notice has been given. Any assignment of customer rights and duties arising from the concluded contracts require written approval, in order to become effective.

### 9. Cancellation

9.1 Should the customer withdraw from the contract without being entitled to do so, we shall have the right to claim 30% of the purchase price, notwithstanding any other legal action brought to claim higher damages. The customer shall have to prove that the damage caused is lower.

9.2 Should the customer refuse to accept the delivery for reasons beyond our control, the costs of returning and re-delivering the goods subsequently shall be borne by the customer.

### 10. Delivery period

10.1 While every effort shall be made to keep the agreed periods of delivery, they must be considered approximate periods only and may be subject to change.

10.2 The delivery periods shall be reasonably extended if there are hindrances beyond our control, such as Acts of God, industrial disputes, breakdowns, transportation difficulties, delays in the supply of raw materials, faulty materials (scrap), extraordinary disturbances while obtaining supplies ourselves etc. Beyond this, we shall also reserve the right to withdraw from this contract, wholly or partly, after the delay has immediately been communicated to the party concerned, so that no claims for damages or for subsequent deliveries against us can arise.

10.3 Keeping the delivery periods presupposes the performance of the duties the customer has. We shall not assume any liability for damage caused to the customer as a result of deadlines not being met.

10.4 We shall be entitled to make partial deliveries up to a reasonable extent.

### 11. Passing of risk

11.1 If the customer is entrepreneur, the risk of accidental loss or accidental deterioration of the goods shall pass to the buyer, when the goods sold to a destination according to the buyer's instructions are handed over to the hauler, the carrier or any other person or institution commissioned with the shipment of the goods.

11.2 If the customer is a consumer, the risk of accidental loss or accidental deterioration of the goods shall pass to the buyer only at the moment when the goods sold to a destination according to the buyer's instructions are handed over to the buyer himself.

11.3 The goods are deemed to have been handed over even if the buyer delays or refuses the acceptance.

### 12. Complaints

12.1 Obvious faults and defects shall be indicated to us in writing within 8 days after the goods have been received, otherwise the assertion of any warranty claim will be excluded.

12.2 Hidden defects shall be indicated to us in writing by stating the details of the fault immediately after they have been discovered, but within one year after the goods have been received. Commercially acceptable deviations shall not justify deficiency claims.

12.3 Should faults or defects affect only a part of the delivery, the remaining part which is free from faults and defects shall be accepted by the customer.

### 13. Warranty and liability

13.1 Should these General Terms and Conditions not grant the customer express rights and claims, any such rights and claims shall be excluded. This exclusion shall particularly apply to claims for damages arising from the impossibility of performance, delay, special breach of contract, from a fault at the time of contracting, from actionable tort and from a violation of collateral agreements, if and to the extent the damage cannot be attributed to willful intent or gross negligence.

Natural wear and tear shall be excluded from the warranty in any case. Claims for damages shall be excluded if the operating and user instructions have not been observed.

13.2 The limitation of the liability for any kind of damage caused by negligence does not apply when life or health have been endangered or when bodily harm has been inflicted; nor for claims resulting from the product liability.

13.3 The customer's claims for damages arising from a fault or defect shall become statute-barred after one year after handing over the goods. This shall not apply, if we can be charged with malice.

### 14. Repurchase/Replacement

Goods manufactured according to customer specifications cannot be replaced. Planned and agreed return deliveries shall only be accepted after the supplier has confirmed their acceptance in writing.

### 15. Use of materials

15.1 We shall not accept any responsibility, except for the proper workmanship, if materials and substances are used, such as aromatics, liquids, patterns, packaging materials, forms etc., that have been provided by the customer.

15.2 If materials and substances are provided by the customer, he shall be liable that they can be freely used and that no protective rights of third parties are infringed. He shall hold us harmless against and indemnify us for any such protective rights of third parties.

### 16. Printing/Printing inks

The printing technique is based on flexography (flexible printing blocks).

Minor register inaccuracies and colour deviations are unavoidable and shall not justify a reduction of the invoiced amount. We shall file away and archive the customer's printing records, unless they are requested back within 14 days after the goods have been delivered to the customer. The risk of loss or damage shall exclusively be borne by the customer, if we keep the printing records at our premises.

### 17. Data protection

The data necessary for executing the order will be stored in accordance with Article § 33 of the Federal Data Protection Act (BDSG).

### 18. Collateral agreements

Collateral agreements require the written form, in order to become effective. Oral agreements shall not be legally effective.

### 19. Final provisions

19.1 All contracts are exclusively governed by the law of the Federal Republic of Germany. The provisions of the laws concerning the purchase of chattel/UN purchase law shall not be applicable, even if the orderer has his registered office abroad.

19.2 The place of jurisdiction for all disputes arising from the contractual relationship is exclusively the company's registered office at 64625 Bensheim, if the customer is a merchant, a legal entity of the public law or special public-law property. The same shall apply when the customer has no general place of jurisdiction in Germany or when his place of residence or whereabouts are unknown at the time of filing action. We shall also be entitled to bring action at the orderer's principal place of residence.

19.3 Should any individual provisions of the contract with the customer or of these General Terms and Conditions be or become ineffective, wholly or partly, the validity of the remaining provisions hereof shall not be affected. The entirely or partially ineffective provision shall be replaced by relative provisions coming as close as possible to the economic success of the ineffective one.

### 20. Address

COOLIKE Regnery GmbH, Lilienthalstr. 2-4, D-64625 Bensheim, phone: +49 6251 845050, Fax: +49 6251 845055, Internet: www.coolike.de, E-Mail: info@coolike.de