General Terms and Conditions of Sale and Delivery

1. Scope of Application of Our General Terms and Conditions of Sale and Delivery (“General Terms and Conditions”): Exclusively Odermath’s General Terms and Conditions shall apply. No contrary terms and conditions of the buyer or terms and conditions at variance with these General Terms and Conditions shall be recognized by Odermath, unless Odermath has expressly confirmed the application thereof in writing. Odermath’s General Terms and Conditions shall also apply if Odermath renders delivery unconditionally in awareness of contrary terms and conditions of the buyer or terms and conditions at variance with these General Terms and Conditions.

2. Offer and Agreement: (1) Odermath’s offers shall be subject to change, unless stipulated otherwise in the written offer or order confirmation.

(2) The purchase agreement is fully presented in the offer, the order confirmation and these General Terms and Conditions. Subsequent changes to the order shall entitle Odermath to invoice the resulting additional costs.

3. Prices: (1) Unless stipulated otherwise in the written offer or order confirmation, the prices shall be free ex works. The prices thus include the loading at the registered office in Odermath.

(2) The stipulated prices shall be based on current raw material and supply costs, wages and freight. If these costs change, Odermath reserves the right to reasonably re-determine prices within the framework of the cost increases incurred, unless stipulated otherwise. Odermath shall document the change in the current raw material and supply costs, wages and freight to the buyer on request.

4. Delivery Period: (1) If Odermath has concluded a framework agreement with the buyer for a particular period, Odermath shall be free to determine the delivery period and the delivery quantity for each call-up. This shall only apply provided no specific delivery quantity or delivery period is specified in the framework agreement.

(2) For the delivery obligation to be observed, the buyer must fulfill its obligations properly in due time; in particular, the buyer must fulfill the payment obligations assumed by it based on all agreements in due time.

(3) Odermath may postpone the delivery or rescind it in whole or in part, if the completion or shipment is hindered or rendered impossible due to reasons for which Odermath is not responsible, e.g. through strike or events of force majeure of any type.

5. Acceptance and Shipment: (1) The buyer shall be obligated to accept additional quantities of the purchased object made for production reasons in an amount of up to 5% of the merchandise ordered. To determine the weight of the sent quantities to be billed, the calibrated vehicle weighting station of the delivery works or the weighing by the railway officials at the shipping station shall be decisive.

(2) If merchandise ready for delivery stays put at the buyer's disposition and request, the invoice may be issued and payment may be requested immediately. The merchandise shall be stored for the account and at the risk of the buyer. This shall not affect Odermath's right to request acceptance.

(3) If the buyer is in default of acceptance or negligently breaches other cooperative duties, Odermath shall be entitled to request that the incurred damage be compensated, including any additional expenses. Further rights and claims shall be reserved.

(4) The risk of accidental loss or deterioration of the merchandise shall pass to the buyer on the date the buyer falls into default of acceptance or on the date he violates another contractual obligation.

(5) Merchandise accepted before shipping shall be considered as delivered in accordance with the agreed terms and conditions.

(6) Even in the case of deliveries free of freight charges, the shipment shall always be made at the buyer’s risk.

6. Retention of Title: (1) Odermath shall retain title to the merchandise until the fulfillment of all claims from the business relation, including all balance claims from current accounts to which Odermath is entitled against the buyer now or in the future irrespective of the ground. Merchandise to which Odermath holds title shall hereinafter be referred to as the “reserved merchandise.”

(2) The buyer shall be entitled to process and sell reserved merchandise in the ordinary course of business, unless the buyer is in default. No pledges or chattel mortgages shall be permitted. Claims regarding the reserved merchandise arising from the resale or based on any other legal ground (insurance, tortious action) (including all balance claims from current accounts) are hereby assigned in full by the buyer to Odermath in advance by way of security, irrespective of whether the reserved merchandise is resold without or after processing. Odermath hereby irrevocably authorizes the buyer to collect claims assigned to Odermath for its account in its own name. This collection authorization may only be revoked if the buyer does not duly meet its payment obligations.

(3) Reserved merchandise shall always be processed or transformed on behalf of Odermath as manufacturer, though without any obligations for Odermath. If reserved merchandise is processed with other objects not pertaining to Odermath, Odermath shall acquire co-title to the new object in the proportion of the value of the reserved merchandise (invoice value) to that of the other processed objects at the time of the processing. With respect to the object arising through the processing, the same shall apply as for the merchandise supplied under title retention.

(4) If reserved merchandise is inseparably mixed with other objects not pertaining to Odermath, Odermath shall acquire co-title to the new object in the proportion of the value of the reserved merchandise (invoice value) to that of the other mixed objects at the time of the mixing. If the mixture occurs in such fashion that the buyer's object is to be viewed as the main object, it shall be considered as agreed that the buyer shall transfer Odermath co-title on a prorated basis. The buyer shall store Odermath's properly free of charge.

(5) In the event of execution measures or other third-party interference with the reserved merchandise, the buyer shall draw attention to Odermath's title and inform Odermath without delay, specifying in writing the documents necessary for intervention. If the third party is not able to bear the in- and out-of-court costs for Odermath's intervention, the buyer shall be liable for the loss incurred by Odermath.

(6) If the buyer acts in breach of contract, particularly if the buyer is in default with payment, Odermath shall be entitled to rescind the contract and to take back the reserved merchandise. Odermath shall be empowered to sell the merchandise after taking it back. The sale proceeds are to be credited to the liabilities of the buyer, less reasonable selling costs.

(7) If the value of the security exceeds the claims to be secured by more than 20%, Odermath agrees to release at the buyer's request the securities to which it is entitled to the corresponding degree; Odermath shall be entitled to choose the securities to be released.

7. Payment: (1) Invoices may be issued at any time, even for partial deliveries.

(2) Payment must be made without any cash discount within 14 days after delivery ex works. The provisions of statutory law shall apply in the event of default with payment. Discount fees, bill stamps, interest and all other expenses charged by banks are to be borne by the buyer.

(3) The buyer shall only be entitled to set-off rights if its counterclaims are declared by non-appealable judgment, are undisputed or recognized by Odermath. Moreover, the buyer shall only be empowered to exercise a retention right if its counterclaim is based on the same contractual relation.

(4) Representatives shall not be empowered to receive payments.

8. Defects and Damage: (1) For the buyer to have defect claims, the buyer must duly meet its obligations to inspect the merchandise and lodge any complaints in accordance with § 377 of the Commercial Code. Complaints must be lodged in writing.
(2) Complaints regarding the weight and number of units of merchandise are to be asserted immediately after receiving the merchandise. Other defect-related complaints may only be taken into account if reported to Odermath in writing within two weeks after the reception of the merchandise.

(3) In the event of a defect, Odermath shall be entitled, at its choice, to remedy the defect or to deliver a defect-free object (subsequent performance). For Odermath to be liable, the defect cannot be insignificant. Should one of the two or both types of subsequent performance be impossible or disproportionate, Odermath shall be entitled to refuse the subsequent performance. So long as the buyer does not fulfill its payment obligations towards Odermath, Odermath may refuse the subsequent performance to the degree corresponding to the defect-free portion of the performance. Should the subsequent performance fail or not be reasonable for the buyer or should Odermath refuse both types of subsequent performance, the buyer shall have the option to either reduce the purchase price correspondingly or to rescind the contract in accordance with the provisions of law. Further claims of the buyers, irrespective of the legal ground, shall be excluded hereby.

(4) No warranty shall be assumed for damage if such damage is attributable to the following grounds: unsuitable or improper use, faulty assembly by the buyer or third parties, faulty or negligent treatment, excessive use, unsuitable supplies, chemical, electro-chemical or electrical influences (provided Odermath is not responsible for them), improper changes made without Odermath’s prior approval or reconditioning work by the buyer or third parties.

(5) Representations and warranties shall only be valid if expressly issued in writing by Odermath. Any samples provided shall merely be considered as an approximation of the features of the merchandise; in no case shall the delivery of a sample constitute the issuance or assumption of a warranty for the features of the delivered merchandise.

(6) Odermath shall not be liable for recommendations made regarding quality or design or for other professional information.

(7) In the event of disputes concerning compliance with a separately agreed guarantee concerning chemical composition or physical features, solely an expert opinion from the Max-Planck-Institut fuer Eisenforschung GmbH, Duesseldorf shall be decisive. Random samples are to be taken jointly. The costs of the investigation shall be borne by the party that loses. With respect to the defects, the expert opinion shall be an arbitral opinion; the legal consequences in the case of any defects shall be determined in accordance with the contract and these General Terms and Conditions.

9. Damage Compensation Claims: (1) Odermath shall be unrestrictedly liable only for intentional action or gross negligence (also in relation to its representatives and vicarious agents) and for damage based on any injury to life, limb or health that is caused by a negligent breach of duty on its part or on the part of its representatives or vicarious agents. Odermath shall likewise be unrestrictedly liable for the issuance of representations and warranties, if a defect encompassed by them triggers the liability. Nor shall a restriction exist in the case of liability based on perilous elements, particularly in accordance with the Product Liability Act.

(2) In the event of any other negligent breach of material duties, the residual liability of Odermath shall be limited to the foreseeable damage typical to the contract. "Material duties" shall mean material contractual duties, i.e. those duties which give the contract its character and upon which the buyer may rely; i.e. material rights and duties that create the prerequisites for the contractual performance and are indispensable for the achievement of the purpose of contract.

(3) Otherwise, liability shall be excluded, irrespective of the legal ground, particularly claims based on the breach of main or ancillary contractual duties, tortious action and other liability in tort.

10. Place of Performance and Jurisdiction: (1) Odermath’s registered office in 40789 Monheim shall be considered as the place of performance for the delivery, performance and payment.

(2) German law shall apply to all disputes arising directly or indirectly from the contractual relation (e.g. actions arising out of a bill of exchange). The application of the UN Convention on Contracts for the International Sale of Goods is hereby excluded.

(3) Duesseldorf shall be the agreed place of jurisdiction for all claims based on this Agreement. However, Odermath shall be entitled to pursue its claims at the buyer’s registered office, without prejudice to the application of German law.

As of: January 2011