

General Terms and Conditions of Sale of the Hebmüller GmbH

§ 1 General – Scope

- (1) Our Terms and Conditions of Sale shall apply exclusively; contrary Customer terms and conditions or terms and conditions deviating from our Terms and Conditions of Sale are not recognised by us unless we have expressly agreed in writing to their application. Our Terms and Conditions of Sale shall also apply if we make delivery of goods to the Customer without express reservation in the knowledge of the Customer's contrary terms and conditions or terms and conditions deviating from our Terms and Conditions of Sale.
- (2) All agreements made between us and the Customer for the purpose of performance of this Contract shall be set down in writing in this Contract.
- (3) Our Terms and Conditions of Sale apply only in respect of contractors as defined in § 310 BGB [German Civil Code].

§ 2 Tender – Tender Documentation

- (1) Our quotations always are subject of confirmation; this applies also for orders following former quotations.
- (2) Price lists and circular letters are without obligation.
- (3) If the order qualifies as a tender as defined in § 145 BGB, this means the customer orders without relating to a specific offer, we may accept the said order within a period of 2 weeks.
- (4) We retain title and intellectual property rights to all samples, diagrams, drawings, calculations and other documentation. This also applies in the case of such written documentation as is classified "confidential". Prior to transmission thereof to third parties the Customer requires our expressed written permission.
- (5) As long parts are produced according samples, models, drawings or other data of the customer, the customer takes over the full responsibility, that trademark rights of third parties will not be infringed.

§ 3 Prices – Terms and Conditions of Payment

- (1) Unless there is provision to the contrary in the Order Confirmation our prices are stated "net ex works, excluding packaging"; the latter shall be separately invoiced.
- (2) The statutory rate of VAT is not included in our prices; it is shown separately in the invoice at the statutory rate prevailing on the date of billing.
- (3) Deduction of discount requires separate written agreement.
- (4) If nothing to the contrary emerges from the Order Confirmation the net purchase price (without deduction) shall be due for payment within 30 days from date of invoice. Statutory provisions apply regarding the consequences of payment in arrear.
- (5) Parts which should be delivered, according to the agreement, later than 4 months after the conclusion of the contract, we are entitled to adjust the prices, if the costs based on our calculation increased.
- (6) The Customer is only entitled to the right of offset if his counterclaim is legally final, uncontested or recognised by us. Furthermore he is only entitled to exercise a right of retention to the extent that his counterclaim is based on the identical contractual relationship.

§ 4 Delivery Time

- (1) The delivery time starts with our Order Confirmation and provides that all technical questions have been clarified.
- (2) Compliance with our delivery obligation further presupposes timely and proper fulfilment of obligations on the part of the Customer. The plea of non-performance of the Contract remains reserved.
- (3) Should the Customer fall into acceptance arrears or culpably infringe other duties of cooperation we are entitled to claim compensation for loss incurred by us including reimbursement of any additional expenses. We reserve the right to advance further claims.
- (4) If the preconditions listed in Paragraph (3) are met, the risk of accidental loss or accidental deterioration of the item purchased shall transfer to the Customer at the point in time where the latter falls into default of acceptance or debt arrears.
- (5) We shall be liable in accordance with statutory provisions if the underlying Contract of Purchase constitutes a fixed date transaction as defined in § 286 Paragraph 2 (4) BGB or § 376 HGB. We shall also be liable in accordance with statutory provisions if as a consequence of delayed delivery for which we are responsible the Customer is entitled to claim that his interest in further performance of the Contract is discontinued.
- (6) We shall be further liable in accordance with statutory provisions if the delay in delivery is due to infringement of Contract for which we are responsible either through intent or gross neglect; culpability on the part of our representatives or vicarious agents shall be attributable to us. If the delay in delivery is not the result of intentional infringement of Contract on our part our liability for damages shall be limited to foreseeable and typical damage occurring.
- (7) We shall also be liable in accordance with statutory provisions if the delay in delivery for which we are responsible is based on a significant contractual obligation; in this event however liability for damages shall be limited to foreseeable and typical damage occurring.
- (8) Further statutory claims and rights on the part of the Customer remain reserved.
- (9) Tools, moulds, devices etc. are billed according to the direct labour and material costs. Due to the fact that the construction bases on our technology, tools, moulds, devices etc. stay in our property, even if the Customer took over partial costs for the manufacturing. Time and location of storage are determined by us. Tools, moulds, devices etc. will be maintained, repaired and rebuilt on our costs, if necessary.
- (10) Due to the manufacturing process it is not always possible to comply with the exact quantities outlined in the order. So we reserve the right to deliver up to 10% less or more with all orders, for custom-made products up to 20% less or more.

§ 5 Transfer of Risk – Packaging Costs

- (1) Unless there is provision to the contrary arising from the Order Confirmation delivery shall be agreed as "ex works". We are not the producer of the products we sell, but only the dealer.
- (2) If the Customer wishes we shall cover delivery by transit insurance; the costs arising will be paid by the Customer.

§ 6 Liability for Defects

- (1) Claims in respect of defect advanced by the Customer presuppose that he has properly met his obligations in respect of inspection and defect notification pursuant to § 377 HGB [German Commercial Code].
- (2) Should there be any defect in the item purchased we are entitled at our discretion to subsequent performance in the form of defect rectification or supply of a new item free of defect. In the event of defect rectification we undertake to bear all expenditure necessary for the purpose of defect rectification, in particular transportation, travel, labour and material costs provided these are not increased due to the fact that the item purchased has been transferred to a location other than the place of performance.

- (3) Should subsequent performance fail the Customer shall be entitled at his own discretion to demand withdrawal or reduction.
- (4) We shall be liable in accordance with statutory provisions if the Customer claims compensation for damages based on intent or gross negligence including intent or gross negligence on the part of our representatives or vicarious agents. Provided we are not charged with intentional breach of contract damages liability shall be limited to foreseeable typical damage occurring.
- (5) We shall be liable in accordance with statutory provisions if we culpably infringe a significant contractual obligation; in such event liability for damages shall be restricted to foreseeable typical damage occurring.
- (6) Liability as a consequence of culpable injury to life, physical injury or damage to health remains unaffected; this applies equally to compulsory liability under product liability law.
- (7) In the absence of any provision contrary to the above liability is excluded.
- (8) Statute of limitations for defect claims is 12 months calculated from transfer of risk.
- (9) Statute of limitations in the event of any recovery of delivery damages pursuant to §§ 478 and 479 BGB remains unaffected; this is five years calculated from delivery of the defective item.

§ 7 Joint Liability

- (1) Any liability beyond that proved in § 6 is excluded – irrespectively of the legal nature of the claim asserted. This applies in particular in respect of claims arising from default in the course of conclusion of the Contract, as a consequence of other breach of obligation or tortious claims for compensation for damage to property as defined in § 823 BGB.
- (2) The limitation under Paragraph (1) shall also apply if the Customer demands compensation for futile expenditure in lieu of compensation for damage and in lieu of performance.
- (3) If damage compensation liability vis-à-vis ourselves is excluded or limited this applies equally in respect of the damage compensation liability on the part of our appointees, workers, employees, representative and vicarious agents.

§ 8 Reservation of Title Assurance

- (1) We reserve title to the item purchased plus all existing and future claims arising from our business relationship with the Customer including our current account claims and including all current account balance claims up to the point of receipt of all payments due under the terms of the supply contract. In the event of behaviour contrary to contract on the part of the Customer, in particular in the event of payment arrears, we are entitled to recover the item purchased. Recovery of the item purchased implies withdrawal from the Contract. We are authorised to realise the item purchased subsequent to recovery and the proceeds of realisation shall be credited against the Customer's obligations - less appropriate costs of realisation.
- (2) The Customer undertakes to treat the item purchased with due care; in particular he undertakes to adequately insure the said item at new for old value against damage by fire, water and theft. If servicing and inspection work is necessary the Customer must carry this out in a timely manner at his own cost.
- (3) In the event of attachment or other third party involvement the Customer shall immediately notify us in writing in order that we may file an action under the terms of § 771 ZPO [Civil Procedural Rules]. If the third party is not in a position to refund us court and out-of-court legal costs as defined in § 771 ZPO the Customer shall be liable for the loss incurred by us.
- (4) The Customer is entitled to resell the item purchased in the normal course of business; however he shall assign to us all claims at the level of the final invoice sum (including VAT) or our claim accruing to him from resale to his purchasers or third parties and that irrespective of whether the item purchased was resold without or following processing. The Customer remains authorised to collect the said claim even after the assignment. Our authority to collect the claim ourselves remains thereby unaffected. However, we undertake not to collect the claim ourselves provided the Customer meets his payment obligations arising from the proceeds recovered, does not fall into payment arrears and in particular if no application has been made to open composition or insolvency proceedings or if there has been no discontinuation of payment. Should this however be the case we may demand that the Customer notifies us of the claims assigned and the latter's debtors and provides all details necessary to collection, hands over association supporting documentation and communicates assignment to the debtors (third parties).
- (5) Processing or alteration of the item purchased by the Customer shall always be undertaken on our behalf. Should our reserved title goods be processed together with other items not belonging to us we shall acquire joint title to the new item in the ratio of the value of the item purchased (final sum invoiced including VAT) to the other processed items at the point of processing. Regarding processing of the resultant item in other respects the same applies as for the item purchased supplied under reservation.
- (6) Should the item purchased be inseparably amalgamated with other items not belonging to us we shall acquire joint title to the new item in the ratio of the value of the item purchased (final sum invoiced including VAT) to the other items amalgamated at the point of amalgamation. Should amalgamation occur in such a manner that the Customer's item is regarded as the main item it shall be agreed that the Customer transfers pro rata joint title to us. The Customer shall retain the sole title or joint title so resulting on our behalf.
- (7) The Customer also assigns to us all claims for securing our claims against him which come about as a consequence of combining the item purchased with a property vis-à-vis a third party.
- (8) We undertake to release the securities due to us on request by the Customer when the realisable value of our securities exceed the claims secured by more than 10%; choice of the securities released is at our discretion.

§ 9 Legal Venue – Place of Performance

- (1) Neuss shall be the legal venue; we are however also entitled to take action against the Customer at the court at his resident seat.
- (2) The law of the Federal Republic of Germany applies to this contract; the application of the UN Convention on the International Sale of Goods is excluded.
- (3) Unless there is provision to the contrary in the Order Confirmation Neuss shall be our place of performance.
- (4) The content of Contracts separately agreed (individual agreements) take precedence over these General Terms and Conditions of Business; provided these individual agreements have written expression. All agreements, ancillary agreements etc, between the parties must be in writing, this applying also to cancellation of the written form.
- (5) Should any provision be or become invalid either wholly or in part this shall not affect the validity of the remaining provisions. The parties undertake to replace the invalid provision by such legally valid provision which nearest approaches the commercial purpose of the invalid provision replaced. The invalidity of individual provisions does not affect the binding nature of these General Terms and Conditions of Business in other respects.

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