

General Terms and Conditions of Business and Delivery of HEGGEMANN AG

I. General, Scope

- 1) These General Terms and Conditions of Business and Delivery apply to all present and future business relations.
- 2) Terms and Conditions which diverge from, contravene or supplement these General Terms and Conditions are no integral part of the contract – even when becoming known -, unless validity is expressly confirmed in writing.
- 3) For the purpose of these Terms and Conditions, the term “consumer” shall mean a natural individual with whom a business relation is established, and to whom no commercial or self-employed professional activity can be assigned.
- 4) For the purpose of these Terms and Conditions, the term “entrepreneur” shall mean a natural or legal individual or a partnership with legal capacity, with whom or which a business relationship is established, and who or which, at the time of completion of the legal transaction, act in exercise of their commercial or self-employed professional activity.
- 5) The term “customer” for the purpose of these Terms and Conditions refers to both, consumers and entrepreneurs.

II. Offers and Placing of Orders

- 1) Our offers are always subject to confirmation. In case of doubt, the contract will only be accomplished according to the contents and requirements of our written confirmation of order, provided a confirmation is issued. Offers and their attachments may not be disclosed to third parties.
- 2) Supplementary agreements, alterations, amendments or suspensions of this contract are subject to our written confirmation.
- 3) Our field staff is not entitled to accomplish conclusions of contracts or collections, unless it is expressly authorized to such action in written form.
- 4) The specifications and illustrations contained in our price lists, brochures, cost estimates and offers, especially those with regard to weights, measurements and other technical data, such as DIN- or VDE-Data or other internal or external standards or samples referred to are only intended to identify the subject matter of contract and constitute a covenant of properties only upon appropriate written confirmation.
- 5) The purchaser takes responsibility for the specifications and parts provided by him.
- 6) With regard to price reviews in the event of sub-orders of public contracts the following applies: Agreements relating to a subjection to price reviews in case of public contracts according to VOPR Nr. 30/53 are only an integral part of the contract in case this is expressly declared by us in writing to the ordering party upon order acceptance.

III. Prices and Conditions of Payment

- 1) Our prices are quoted in Euro net without a discount or other form of abatement, ex works, excluding packaging. The rate of value added tax applicable on the date of dispatch to be added to freight and insurance costs. Discounts to be agreed separately between the parties in written form.
- 2) Should any increases arise in the costs of items relevant for price calculation, such as production material, energy, supplies, salaries and wages, freight and transport costs, customs tariffs, taxes or other similar costs, within the time from the conclusion of the contract to the delivery date stipulated, these additional costs may be invoiced by us and the agreed prices may be increased subsequently. Such price increase will be limited to the price achievable in the market. In case a fixed price was agreed, we are entitled to subsequently change the prices quoted and ask the customer for acceptance of the increased prices. In case an agreement is not reached, we are entitled to withdraw from the contract. In case the customer is no merchant, our reservation for withdrawal only applies, if the delivery time contracted exceeds 4 months or in case of a continuing obligation.
- 3) Our invoices are considered to be accepted, unless they are rejected in written form within 30 days from the date of invoice. This note is also given on our invoices.
- 4) Payments to be effected strictly net within 8 days from the receipt of invoice. In case of maturity or delay of payment, accumulated interest will be charged by us. However, the amount charged will exceed the base rate by a minimum of 5%. In addition, any other cost incurred through damages caused by the delay will be charged. Settlements by cheques and drafts are subject to our express approval.
- 5) In case of a delay with more than one liability our complete claims against the customer become due for immediate payment.
- 6) The customer is only entitled to an offset, in case a counterclaim was legally admitted or acknowledged by ourselves. The customer may only execute a right of retention in case his counterclaim is based on the same contractual relationship.
- 7) Our claims are assigned to BFS finance GmbH, Verl/GER, insofar as the invoices are marked with a corresponding note. Payments with debt-discharging effect can be settled only to BFS; bank account details can be taken from the invoices' notes.

IV. Delivery, Risk Tasking

- 1) Unless otherwise agreed, delivery time commences upon confirmation of order, however, in no case prior to receipt of the material to be processed, and provided all technical and organizational details relating to the contract have been determined bindingly.

- 2) In case of unforeseeable, inevitable or serious incidents on our part, or on the part of suppliers or subcontractors, such as strike, lockout, breakdown, shortage of material or energy, lack of personnel, official orders or interventions, natural phenomena, lack of means of transport etc., which result in delay or impossibility of delivery or performance we do not account for, the delivery time agreed is extended by the time lost through disruption; in case of impossibility of performance both parties are entitled to a withdrawal from the contract.
- 3) In case the cost factors on which the respective offer was based are considerably influenced by the extension of delivery time, or if execution is otherwise unreasonable to us, we are entitled to withdrawal, claims for damages excluded.
- 4) The delivery time is considered to be met, if the delivery item has left the company or if the customer was notified of the readiness for dispatch. In fact, the delivery time is to be regarded as approximate, only. Therefore, in case the delivery time is not met, the customer is only entitled to assert rights if a special agreement has been made.
- 5) In case the customer fails, despite written reminder, to provide materials or services needed for contract fulfilment, we are optionally entitled to withdraw from the contract or to ask for indemnification due to default, following 14 days of additional respite.
- 6) Partial deliveries are admissible.
- 7) If the customer is an entrepreneur according to § 1, he assumes the risk of loading, transport and unloading, from the time of delivery to the forwarding agent. This applies even if transport costs are borne by ourselves. If the customer is a consumer according to § 1, he assumes the risk from the time of receipt of the goods. In case the goods intended for processing are collected by us upon request by the customer, risk of transport is assumed by the customer. The customer is free to take out insurance against these risks. The provisions specified also apply in case delivery takes place carriage paid.
- 8) In case the goods are ready for dispatch and delivery or acceptance is delayed for reasons, we do not account for, the risk is transferred to the customer upon receipt of the notification for readiness for dispatch. Goods ready for dispatch are to be immediately called by the customer, however, no later than within 10 days from the receipt of named notification. In case the goods are not called in time, we are entitled to store the goods at our discretion at the customer's risk and expense. Warehousing charges may amount to 1 % of the invoice total per month, they are limited, however, to 5 % of the amount of invoice, unless we can provide evidence of higher costs incurred.
- 9) Unless otherwise agreed, the customer bears the cost of unloading. In case the goods are not immediately unloaded by the customer, he bears any expenses or risks incurred through standby time. Unloading of the goods by means of the crane on the delivery van is at the customer's risk and expense.

V. Acceptance

- 1) Unless otherwise agreed, acceptance to take place at the supplier's site, immediately when completion is announced to the customer. If acceptance is not realized at the time scheduled by us, we are entitled to dispatch the goods without acceptance or store the goods at the customer's risk and expense. Upon dispatch or storage the goods are regarded as contractually delivered and accepted, unless we have received a written statement from the customer within an adequate time limit set by us. Upon setting the time limit, the customer's attention will be drawn to the importance of this written statement.

VI. Reservation of Title and Security Rights

- 1) In the case of contracts with consumers we reserve the title in the goods until the complete payment of the purchase price. In the case of contracts with entrepreneurs we reserve the title in the goods until the complete settlement of all claims from the current business relationship and the claims still arising in connection with the object of the contract. During the period of the reservation of the title, the customer is obligated to immediately inform us of any access of third parties to the goods, for example in the case of a seizure, and of any damage to or the destruction of the goods as well as to provide us with the information required for any legal pursuance and to hand over the required documents. The customer shall notify us immediately of any change in the possession of the goods.
- 2) We are entitled to a legal contractor's lien on the objects handed over to us. Irrespective of this the principal grants to us a contractual lien on the objects handed over to us, which serves the securing of all claims from the business relationship. If the parts are delivered to the principal before the complete payment, it is hereby agreed with the principal that he will transfer to us the title in these parts in the value of our claim for the purpose of securing our claims and the transfer of the possession shall be replaced by the principal holding the parts in custody for us. The same applies accordingly with regard to the contingent right of the principal in the objects handed over to us, which were delivered to the principal by a third party under reservation of title. We are entitled to cause the cancellation of the reservation of title. Principal's claims for reassignment towards a third party, to whom for the purpose of security he had previously transferred the title in the objects handed over to us, shall be assigned to us. We hereby accept the assignment.
- 3) The principal shall neither pledge nor transfer the respective title as security in objects, in which we have a lien or which are in our reserved ownership and/or security ownership. He is entitled, however, to resell or process the objects in the ordinary course of business, unless he effectively assigned the claim against his contractual partner to a third party previously. Any processing of the objects being in our reserved or security ownership by the principal into a new movable object is made

on our behalf and for our benefit without liabilities arising for us thereby. We hereby grant to the principal the co-ownership in the object in the proportion of the value of the new object compared to the value of our performance. The principal shall hold in custody the new object with the care of a businessman and free of charge.

4) If goods under reservation of title are processed to a new movable object by the customer, this processing is carried out in our name and on our behalf. If the processing is made with objects not being in our ownership, we will acquire co-ownership in the proportion of the value of the goods delivered by us compared to the other processed objects. The same applies, if the goods are mixed, mingled or connected with other objects not being in our ownership. If the customer acquires the sole ownership by mixture, mingling or connection, co-ownership in the proportion of the value of the goods is hereby transferred to us under reservation of title to the other goods at the moment of the mixture, mingling or connection. In these cases, the customer shall hold in custody free of charge the objects in our ownership or co-ownership, which are also considered as goods under reservation of title in the meaning of the following provisions.

5) If the goods under reservation of title are resold by the entrepreneur, the entrepreneur hereby assigns to us the claims against third parties arising from the reselling to the amount of the value of the objects under reservation of title and we already now accept this assignment. If we hold co-ownership in the goods under reservation of title, the assignment of the claims extends to the amount, which corresponds to the value of the proportion of our co-ownership. After the assignment the entrepreneur is entitled to the collection. We reserve the right to collect the claims ourselves, in case the entrepreneur does not comply in full with his obligation of payment. In this case the entrepreneur is obligated to name towards us the debtors of the assigned claims and to inform the debtors of this assignment.

6) Upon our request the principal shall provide evidence of each individual claim and disclose to the third party assignee the executed assignment with the request to make payments to us up to the amount of our claims. We are at any time entitled to inform the future assignee of the assignment and to collect the claim. However, we will not make use of this right and will not collect the claim as long as the principal duly meets his obligations of payment.

7) The principal is obligated to inform us immediately of execution measures by third parties in the rights of security and/or in our title. The principal is further obligated to sufficiently secure our title and to assign to us the claims against the securing upon request. Upon request of the principal we will release the securities, to which we are entitled according to the provisions above, to the amount that their value exceeds the claims to be secured by more than 20%.

8) All of our claims also from other contracts will be due immediately also in the case of respite, as soon as the principal becomes delayed with the fulfilment of other liabilities towards us, stops his payment, becomes excessively indebted, insolvency proceedings on his assets are initiated or the initiation is rejected due to absence of assets or circumstances become known which may reasonably reduce the creditworthiness of the principal to a substantial amount. In such case we are optionally entitled to execute outstanding deliveries and services only against advance payment or provision of security or to withdraw from the contract upon previous fruitless reminder, even if the consideration is not yet due.

VII. Warranty

1) In case the customer is an entrepreneur, standard breakage and wastage are not considered as material defects. In case the customer is an entrepreneur, warranty for material defects in the first instance covers subsequent performance (rework or replacement at our option). In case the customer is a consumer, legal regulations apply.

2) In case subsequent performance fails, the customer is entitled to a reduction of payment (abatement) or rescission (withdrawal) from contract, at his option. In case of negligible contrarities, however, as for instance minor deficiencies, the customer is not entitled to withdrawal from contract.

3) Warranty is only granted, provided the entrepreneur notifies us immediately in writing of apparent deficiencies upon receipt of the goods. To comply with this regulation, such complaint is to be dispatched in due time. Full burden of proof relating to the qualifying conditions of entitlement lies with the entrepreneur, especially with regard to the deficiency itself, the time of detection of the deficiency, and the due dispatch of the complaint. Consumers shall notify us in writing of apparent deficiencies within a period of two months from the time of detection. The time of receipt of the notification on our side is relevant for an observance of this time limit. In case the consumer fails to notify us as stipulated, warranty expires after a period of two months from the detection of the deficiency. This does not apply, in case we can be accused of fraudulent intent. Burden of proof regarding the time of detection of the deficiency is on the part of the consumer. In case the consumer was affected to purchase of the item by incorrect statements by the manufacturer, burden of proof with regard to his purchase decision is on his part. In case of used goods, burden of proof with regard to deficiencies of the items is on the part of the consumer.

4) In case the customer decides to withdraw from the contract due to defects of title or material, following failure of subsequent performance, he is not entitled to a claim for indemnity due to the deficiency. In case the customer opts for indemnity following failure of subsequent performance, the goods remain with the customer, unless this is unreasonable to him. Indemnity is limited to the difference between the purchase price and the value of the faulty item. This does not apply, in case violation of contract was caused by us with fraudulent intent.

5) In case the customer is an entrepreneur, the product description is regarded as agreed with respect to the condition of the goods. Public statements, advertisements or sales promotions by the manufacturer do not represent a conventional declaration of the condition of the goods.

6) In case the customer is provided with faulty assembly instructions, we are merely obligated to provide faultless assembly instructions. However, this only applies, in case the faulty assembly instructions make an appropriate assembly impossible.

7) Warranty claims of the customer are subject to a limitation period commencing with the dispatch of the respective goods.

a) In case of items, which have been used for a building, according to their original purpose, and which have caused deficiency of the building, the limitation period amounts to five years.

b) In case of other items from a contract with a consumer, the limitation period amounts to two years, claims for indemnity of the customer are subject to a limitation period of one year.

c) In case of other items from a contract with an entrepreneur, the limitation period amounts to one year.

8) The above does not apply in case we can be accused of fraudulent intent. In this case warranty claims are subject to the respective legal limitation period.

VIII. Disclaimer

1) In case of minor negligent breaches, liability is limited to the average foreseeable, direct and contractually typical damage, according to the respective item. This also applies in cases of minor negligent breaches on the part of our legal or vicarious agents. To entrepreneurs we are not liable for minor negligent breaches of insignificant contractual obligations.

2) The stipulated limitations of liability do not apply to claims of the customer with regard to product liability. Further, named limitations of liability do not apply to claims by the customer referring to bodily injuries, health damages or loss of life, attributable to ourselves.

IX. Copyright

The customer absolves us from any claims from third parties relating to industrial property rights, in particular copyrights and other similar property rights on drawings and documents provided to us. We commit to using any copies or other reproductions made, for calculating and production purposes only; and further undertake not to disclose the data to a third party.

X. Drawings and Documents

Property and copyright of quotations, drawings and other documents submitted to the customer is reserved to ourselves. Use of these documents is restricted to the purposes defined by us; they may not be disclosed to a third party. The documents shall be returned to us upon request.

XI. Company Secrets / Data Protection

The customer is committed to prevent company secrets, in particular those relating to process engineering information on our products, from disclosure to third parties.

Drawings, manufacturing data and other agreements are subject to data protection; their disclosure to third parties is also prohibited. With his acceptance of these terms and conditions, the customer approves to the recording and processing of his personal data via EDP within the scope of the contractually intended purpose.

XII. Insurance

For items delivered by the customer and for transports to be effected to him, an insurance against e.g. breakage, damages through transport or fire or against theft will be taken out only if agreed in particular and at the expense of the principal.

XIII. Place of Delivery, Jurisdiction and Applicable Law

1) The laws of the Federal Republic of Germany are applicable. The provisions of the UN Convention on Contracts for the International Sale of Goods (CISG) do not apply.

2) In case the customer is a merchant, legal entity of public law or separate estate under public law, place of delivery for all claims arising out of or in connection with this contract is our business location.

3) In case the customer is a merchant, legal entity of public law or separate estate under public law, any dispute arising out of or in connection with this contract, shall be settled at the place of jurisdiction competent for our business location. The same applies, in case the customer at the time legal action is taken has no general place of jurisdiction in Germany or in case his domicile or habitation is unknown. The customer can get sued at his place of business as well.

4) These General Terms and Conditions of Business and Delivery are valid and legally binding only in the German-language original.

XVI. Severability Clause

The invalidity or unenforceability of any of the provisions of these Terms and Conditions or of any part of the contract for any reason whatsoever shall not affect the validity or enforceability of the remainder of these provisions or of the contract with the customer. In this case, the parties hereto will endeavour to replace the invalid or unenforceable provision by an adequately consistent provision.