

## **General Terms and Conditions      As of: 30.11.2018**

### **1. Offer and conclusion of contract**

- a) All transactions are subject to the following conditions. They shall also apply in the case of an ongoing business relationship and for all future transactions with the customer, even if this is not specifically confirmed in individual cases.
- b) Deviating terms and conditions of the customer are hereby expressly rejected. These are not binding for us even if we do not object again when concluding the contract or if we carry out the delivery to the customer without reservation in the knowledge of deviating terms and conditions of the customer. The customer's terms and conditions shall only apply if we have expressly confirmed this in writing.
- c) Our offers are non-binding in terms of price, quantities, delivery period and delivery options.
- d) Errors in spelling and calculation as well as other easy discernible discrepancies in offers, orders and confirmation communications are not binding for us. They must be queried by the customer without delay and may be corrected by us at any time under exclusion of liability.
- e) Assurances regarding properties, special uses and applications of our goods, verbal agreements, insofar as they amend our general terms and conditions of sale, delivery and payment, and ancillary and subsequent contractual arrangements shall only become binding for us upon written confirmation.

### **2. Blanket orders**

- a) A blanket order is a quantitative determination of the total requirement for a specific product agreed between the customer and us for a period of a maximum of 6 months (half-year requirement). The customer schedules deliveries within the scope of the blanket order placed by him by means of call-off orders.
- b) We are entitled to procure the material for the entire blanket order. Change requests from the customer can no longer be taken into account after the order has been placed – neither overall nor for partial quantities.
- c) Delivery readiness is ensured/delivery takes place in partial quantities during the term of the contract upon placement of a call-off order by the customer. The goods are due for payment immediately after they have been made available for delivery in accordance with the payment agreement.
- d) We are entitled to deliver a quarter of the total order quantity on a quarterly basis without the customer placing a call-off order and the customer is obliged to accept it.
- e) In order to allow the customer greater flexibility in his material planning, we store quantities produced within the blanket order free of charge for the first 6 months, calculated from the date for the first call-off.
- f) If the customer does not accept the ordered goods despite a written request from us, storage and operating costs shall be due immediately at a flat rate of €8.00/storage space per month.
- g) The minimum call-off quantity from a blanket order is one unmixed Euro pallet, unless expressly agreed otherwise.
- h) The prices agreed in the blanket orders are always fixed prices that apply over the term of the individual framework agreements.
- i) The purchaser promises us that he will accept the quantities agreed in the respective framework agreements.

### **3. Prices**

- a) Unless otherwise expressly agreed, prices are subject to change without notice for deliveries from our warehouse or supplying factory. Packaging, transport and freight costs will be invoiced separately. There is no compensation for those picking up goods themselves.

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- b) General price increases in wages and materials can lead to changes in the prices during the term of the contract. The contract remains valid in its amended form even in this event.
- c) Unless otherwise stated in the order confirmation, the price is taken from our price list as applies on the day of delivery. If the shipment is delayed due to reasons for which the buyer is responsible, the date of readiness for shipment shall be deemed to be the calculation date.
- d) VAT is not included in our prices and will be charged at the respective statutory rate on the day of invoicing.
- e) For small orders, a small quantity surcharge is charged. The surcharge will be based on dimension and quality.

#### **4. Delivery**

- a) The dimensions, weights and quantities determined in our shipping department are decisive. Partial deliveries are allowed. Additional or reduced performance of up to 20% is permissible.
- b) Deliveries are generally made from Horn-Bad Meinberg or from our supplying factory or from external warehouses. If we engage third parties to fulfil our delivery obligations (vicarious agents), we shall only be liable for the care taken in selection and supervision.
- c) Contract cancellations cannot be accepted if the goods are already in production.
- d) We are only obliged to deliver within the scope of our effective capacity. Claims for damages due to delay in delivery are excluded, except in the case of intent or gross negligence.
- e) In cases of force majeure, we shall be entitled to make subsequent deliveries with a corresponding delay or to withdraw from the contract in whole or in part without any obligation to pay damages. Force majeure shall include strikes, lockouts and other circumstances at our premises or at a supplier which make delivery significantly more difficult or impossible for us.
- f) We are not liable for any loss or damage in the course of transportation.
- g) Minor deviations from samples are reserved. Significant deviations only entitle the customer to withdrawal from the contract or to replacement delivery, but not to compensation for damages or loss of profit.
- h) We do not assume any liability for compliance with specific weights and dimensions. Deviations of up to plus/minus 10% in accordance with DIN 2005 are reserved.
- i) We can only deliver call-off orders within the scope of the manufacturing capacities of the vicarious agents. We are entitled to have the entire order quantity produced immediately by the vicarious agent. Accordingly, any change requests by the customer can no longer be taken into account after the order has been placed, unless this has been expressly agreed.

#### **5. Retention of title**

- a) All deliveries are subject to retention of title pursuant to Section 449 of the German Civil Code (BGB). The delivered goods remain our property until they have been paid for in full. If the goods are resold before payment of the purchase price, the claim to which the buyer is entitled from the resale shall take the place of the goods; this claim is already assigned to us upon conclusion of the purchase contract.
- b) In the event of the processing or mixing of the goods with the consequence that the goods delivered under retention of title are to be regarded as a non-substantial component of the newly created items, the buyer hereby transfers ownership of the resulting items as security for the claims, under simultaneous agreement that the buyer will keep the items in safe custody for us.
- c) The buyer is entitled to sell the goods or the products made from them in the ordinary course of business, but may neither pledge them nor assign them as security. Any claims vis-à-vis the third parties arising from the resale shall be transferred to us in the amount of the original invoice sum as a precautionary measure and without requiring a separate agreement in the individual case.

- d) As long as he duly fulfils his payment obligations to us, the buyer is entitled to collect these claims for our account; however, we are entitled to notify the end purchasers (third parties) (whose names we are to be given on request) of the subrogation of the claim and to issue payment instruction.
- e) The right of ownership is also valid vis-à-vis the carrier to whom the goods are handed over on behalf of the buyer or at our instigation.

## 6. Payment

- a) No discount shall be granted for payments on invoices for mould costs, shares of mould costs or die costs and shares of die costs and other tools.
- b) Payments for the remaining deliveries – commercial deliveries – are to be made without deduction within 30 days of invoicing. Any bank charges incurred in the case of payment in the country of the buyer are to be paid by the buyer. If payment is made within 10 days of the invoice date, we grant a 2% discount, but only if older invoices have been settled.
- c) We are entitled to charge interest on default or to withdraw from contracts if there is a significant deterioration in the financial circumstances of the buyer. If the customer defaults on payments more than once within 12 calendar months or if we become aware of circumstances after conclusion of the contract in which a prudent merchant would make deliveries only against advance payment or concurrently with payment, all our invoices shall become due immediately and shall be enforceable after setting a deadline of one week, regardless of the agreements made. Likewise, in such cases, we shall be entitled to carry out outstanding deliveries against advance payment or the provision of securities and, after a reasonable grace period, to withdraw from the contract or to claim damages for non-performance. Cessation of payments, settlement proceedings or the insolvency of the customer shall also result in all our claims becoming due immediately regardless of the agreements made. At the same time, any discounts, bonuses, etc. promised shall be regarded in these cases as forfeited, so that the customer shall be required to pay the gross prices invoiced.
- d) Offsetting due to alleged counterclaims is excluded, unless the counterclaim would be undisputed or acknowledged by us or legally established. The customer is entitled to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship.

## 7. Warranty

- a) Quality and construction consultations as well as all technical information are provided to the best of our knowledge. No liability is assumed for this. We do not assume any warranty for the respective specific suitability of the delivered goods for further processing/use or for the physical/chemical reaction with other components at the user's premises.
- b) Ordered goods are manufactured according to samples or drawings, specifying the exact dimensions and intended use.
- c) We shall only be liable for all defects, including defects of title in the goods delivered by us, in such a way that we, at our discretion, either replace the defective products free of charge or compensate for the reduced value or remedy the defect free of charge. If we are unwilling or unable to remedy the defect or make a replacement delivery or if this is delayed beyond a reasonable period of time, for which delay we are not responsible, if rectification or replacement deliveries fail and the customer cannot reasonably be expected to accept a further attempt at rectification or a further replacement delivery, he may, at his discretion, reduce the purchase price or withdraw from the contract. All other claims, regardless of the legal grounds, for example for alleged indirect damages (including consequential damages), claims for damage caused by delay, compensation for wages, personal injury, operational disruption, freight and packaging costs, loss of profit and other claims for damages are excluded. The above disclaimer of liability does not apply if the cause of the damage is based on intent or gross negligence.

## 8. Transfer of risk

- a) Risk shall transfer to the customer at the latest when loading has been completed (even if our means of transport are used or in the case of carriage-paid delivery), and also from the date on which the goods are ready for dispatch if the customer is responsible for a delay in acceptance or delivery.
- b) Also in the case of partial deliveries, the customer assumes the full risk of transport difficulties of any kind, in particular for transport delays, damage, destruction or loss, even if we have taken out transport insurance. This also applies if the goods are not delivered from the place of performance, but from a supplying factory or distribution warehouse. This shall not apply if the cause lies within our area of risk and we are culpable of intent or gross negligence.
- c) If it has been agreed that the transport insurance is covered as part of our general policy and damage occurs as a result of the transport, the customer must arrange for a statement of facts (acknowledgment of damage by the freight forwarder on the consignment note, statement of facts by the Bundesbahn, etc.) before acceptance of the goods. Any transport damage discovered must be reported to us without delay, enclosing a copy of the statement of facts and of the consignment note. Delivered goods, even if they have insignificant defects, are to be accepted by the customer, without prejudice to his rights under Section VII (liability for defects in delivery). If the customer fails to meet these obligations in time, we may refuse to process or settle the claim.
- d) The customer must inform us of any shipping specifications together with the order; the choice of the shipping route and method shall otherwise be at our discretion, without liability for the choice made and without guarantee of the shipping route being the cheapest.

## 9. Notice of defects

- a) Defects can only be asserted immediately after receipt of the goods and within 8 days at the latest. Goods with defects will be repaired or replaced at our discretion; price deductions are not permitted.
- b) Liability for defects is excluded if
  - 1. the reduction in the value or suitability of the delivered goods is insignificant,
  - 2. the damage is due to negligence or accident for which we are not responsible,
  - 3. the complaint is due to an error in an order or otherwise on the part of the buyer,
  - 4. the delivered material has not been maintained or cared for in accordance with the instructions of the seller.

## 10. Custom manufacture

- a) Insofar as products are manufactured according to the drawings, specifications or quality samples specified by the buyer as well as in the case of deliveries for export to areas outside the Federal Republic of Germany, the buyer is liable for all consequences of the infringement of existing property rights. The buyer is obliged to compensate us for any damage we incur in such cases.
- b) Quality samples are only indicative.
- c) Our drawings, samples and models remain our property and may not be made available to third parties for inspection. Tools and fixtures remain our property to dispose of freely, even if the buyer has paid a share of the costs. Half of the shared tool costs is to be paid by the customer when the order is placed and half when the first output sample is presented.

## 11. Partial invalidity

Should individual provisions of these Terms and Conditions of delivery, payment and warranty be legally invalid, this shall not affect the validity of the remaining conditions.

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## **12. Place of performance and jurisdiction**

The place of performance is Horn-Bad Meinberg and the place of jurisdiction is Detmold, even if the delivery is ex works. Detmold is agreed as the venue for all legal disputes. German law shall apply exclusively to the exclusion of the Act on the International Sale of Movable Goods, even if the customer is not domiciled in the Federal Republic of Germany.