

## **General Terms and Conditions of Sale**

**of: HARTAL H. Holzhauer GmbH & Co. KG, Fritz-Lürmann-Str. 21, 58638 Iserlohn**

(as at 09.04.2020)

### **§ 1 Scope of application, form**

- (1) These general terms and condition of sale will apply to all business relationships with our business partners and suppliers (referred to as „buyer“). These terms and conditions only apply if the buyer is a business owner (§14 BGB), a juridical person of public law or a special fund under public law.
- (2) These general terms and condition of sale will, in particular, apply to the sale of and/or delivery of movable goods irrespective of the fact whether we produce the goods ourself or buy them from a subcontractor (§§ 433, 650 BGB). Provided that no other agreement has been made, these general terms and conditions of sale, in the latest version at the point of order placement or the latest version regarding a framework agreement for similar contract, will apply respectively and without the need of notification of such, in each individual case.
- (3) Our general terms and condition of sale will apply solely. Divergent, adverse or complementary general terms and conditions of business of the buyer will only become an integral part of the contract in such a case where we have explicitly confirmed the legitimacy in written form. This consent requirement applies in any case, for example, even if we carry out the delivery to the buyer without reservation in knowledge of the buyer's general terms and conditions.
- (4) Individual agreements made with the buyer in individual cases (including side agreements, supplements and amendments) shall in any case take precedence over these General Terms and Conditions of Sale. The content of such agreements is, subject to proof of the contrary, subject to a written contract or our written confirmation, decisive.
- (5) Legally relevant declarations and notifications of the buyer in relation to the contract (e.g. notice of defects, withdrawal or reduction), are to be made in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Statutory formal requirements and further evidence, especially in case of doubts about the legitimacy of the person making the declaration, shall remain unaffected.
- (6) References to the validity of legal regulations only have a clarifying meaning. Even without such a clarification, the statutory provisions shall therefore apply, unless otherwise specified, directly amended or explicitly excluded.

### **§ 2 Conclusion of contract**

- (1) Our offers are subject to change and non-binding. This shall also apply if we offer the buyer catalogues, technical documentation (e.g. drawings, plans, calculations, calculations, references to DIN standards), other product descriptions or documents - also in electronic form - to which we have transferred ownership reserve copyright.
- (2) The order for the goods by the buyer is considered a binding offer of contract. Provided no other results from the order, we shall be entitled to accept this contractual offer within 14 days after receipt.
- (3) Acceptance can be made either in writing (e.g. by order confirmation) or by delivery of the goods to the buyer.

### **§3 Delivery time & delayed delivery**

- (1) The delivery time will be agreed individually or stated by us when the order is accepted.
- (2) If we do not comply with binding delivery periods for reasons for which we are not responsible (non-availability of the service), we will inform the buyer about this immediately and at the same time will inform the buyer of the expected new delivery period. If the service is also not available within the new delivery time, we are entitled to withdraw from the contract in the whole or in part; we shall immediately reimburse any form of payment already rendered by the buyer. In particular, the non-availability of the service in this sense shall be deemed to be a case of self-delivery by our supplier, if we have a congruent hedging transaction neither we nor our suppliers are to blame, or in individual cases we are not to be held responsible for the procurement.
- (3) The occurrence of our delay in delivery shall be determined by the statutory provisions. In any case, a reminder from the buyer is necessary. If we are in default of delivery, the buyer can insist on a liquidated compensation for the damage caused by delay. The liquidated damages for each complete calendar week entitles the buyer to 0.3% of the net price (delivery value), but in total a maximum 4.5% of the value of the goods affected by the delayed delivery. We reserve the right to prove that the buyer has suffered no damage at all or only a considerably lower damage than the above-mentioned lump sum has accrued.

### **§ 4 Delivery, transfer of risk, acceptance, default of acceptance**

- (1) The delivery is ex warehouse, where the place of performance for the delivery and any additional performance is. At the request and expense of the buyer, the goods will be shipped to another destination (sale to destination). Unless otherwise agreed, we shall be entitled to determine the type of shipment (in particular transport company, shipping route, packaging) ourselves.
- (2) The risk of accidental loss and accidental deterioration of the goods shall pass to the buyer at the point of delivery, at the latest. In the case of mail order purchases, however, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall already pass to the buyer upon delivery of the goods to the forwarding agent, the carrier or any other party responsible for the execution of the order. Insofar as an acceptance is agreed, this is decisive for the transfer of risk. The statutory provisions of the law on contracts for work and services shall also apply accordingly to an agreed acceptance. The handing over or acceptance shall be deemed to be the same if the buyer is in default of acceptance.
- (3) If the buyer is in default of acceptance, if he omits an act of cooperation or if our delivery is delayed for other reasons for which the buyer is responsible, we are entitled to claim compensation for the resulting damage including additional expenses (e.g. storage costs). For this we charge a lump sum compensation for the amount of 50.00 EUR per calendar day, beginning with the delivery period or - in the absence of a delivery period - with the notification of the readiness for dispatch of the goods.  
The proof of higher damages and our statutory claims (in particular compensation for additional expenses, reasonable compensation, termination) shall remain unaffected; however, the lump sum shall be set off against further monetary claims. The buyer shall be entitled to prove that we have not incurred any damage at all or that the damage incurred is considerably less than the above lump sum.

### **§ 5 Prices and terms of payment**

- (1) Unless otherwise agreed in individual cases, our prices at the time of the conclusion of the contract shall apply, namely ex warehouse, plus statutory value added tax.

(2) In case of sale by delivery to a place other than the place of performance (§ 4 para. 1), the buyer shall bear the transport costs ex warehouse and the costs of any transport insurance requested by the buyer. Any customs duties, fees, taxes and other public charges shall be borne by the buyer.

(3) The purchase price is due and payable within 14 days from the invoice date and delivery or acceptance of the goods. However, we are entitled at any time, even within the framework of an ongoing business relationship, to carry out a delivery as a whole or in part only against advance payment. We shall declare a corresponding reservation at the latest with the order confirmation.

(4) The buyer shall be in default with the expiry of the above payment period. The purchase price shall be subject to interest at the statutory default interest rate applicable at the time of default. We reserve the right to claim further damages caused by delay in payment. Towards merchants, our claim for commercial maturity interest (§ 353 HGB) remains unaffected.

(5) The buyer shall only be entitled to rights regarding set-off or retention insofar as his claim has been legally established or is undisputed. In the event of defects in the delivery, the buyer's counter rights, in particular in accordance with § 7 Para. 6 Sentence 2 of these General Terms and Conditions, shall remain unaffected.

(6) If it becomes apparent after conclusion of the contract (e.g. through an application for the opening of insolvency proceedings) that our claim for the purchase price is endangered by the buyer's inability to pay, we shall be entitled to refuse performance in accordance with the statutory provisions and - if necessary after setting a deadline - to withdraw from the contract (§ 321 BGB). In the case of contracts for the manufacture of unacceptable items (custom-made products), we can declare our withdrawal immediately; the legal regulations regarding the dispensability of setting a deadline remain unaffected.

## **§ 6 Retention of title**

(1) We reserve the title to the goods sold until full payment of all our present and future claims arising from the purchase contract and an ongoing business relationship (secured claims), has been made.

(2) The goods subject to retention of title may not be pledged to third parties or assigned as security before full payment of the secured claims has been made by the buyer. The buyer must inform us immediately in writing if an application is made for the opening of insolvency proceedings or if the goods belonging to us are seized by third parties (e.g. distraints).

(3) If the buyer acts in breach of contract, in particular if he fails to pay the due purchase price, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the goods on the basis of the reservation of title. The demand for return does not at the same time include the declaration of withdrawal; we are rather entitled to demand only the return of the goods and therefore reserve the right of withdrawal. If the buyer does not pay the due purchase price, we may only assert these rights if we have previously set the buyer a reasonable deadline for payment without success, or if such setting of a deadline is dispensable under the statutory provisions.

(4) Until revocation according to (c) below, the buyer is authorized to resell and/or process the goods subject to retention of title in the ordinary course of business. In this case the following provisions shall apply in addition.

(a) The retention of title extends to the full value of the products resulting from the processing, mixing or combination of our goods, whereby we are considered the manufacturer. If, in the event of processing, mixing or combination with goods of third parties, their right of ownership remains, we shall acquire co-ownership in the ratio of the invoice values of the processed goods, mixed or combined goods. In all other respects the same applies to the resulting product as for the goods delivered under retention of title.

(b) The buyer hereby assigns to us all claims against third parties arising from the resale of the goods or the product, or in the amount of our possible co-ownership share, in accordance with the preceding paragraph as security. We accept the demise. The obligations of the buyer mentioned in paragraph 2 shall also apply in consideration of the assigned claims.

(c) In addition to us, the buyer remains authorized to collect the claim. We undertake not to collect the claim as long as the buyer has fulfilled his payment obligations to us, if the customer does not comply with the contract, there is no defect in its performance and we do not assert the reservation of title by exercising a right according to paragraph 3. If this is the case, however, we can demand that the buyer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. Furthermore, in this case we shall be entitled to revoke the warrant of the buyer for further sale and processing of the goods subject to retention of title.

(d) If the realizable value of the securities exceeds our claims by more than 10%, we will release securities of our choice upon request of the buyer.

### **§ 7 Buyer's claims for defects**

(1) The statutory provisions will apply, unless otherwise specified in the following, regarding the rights of the buyer in case of material defects and defects of title (including wrong and short delivery as well as improper assembly or faulty assembly instructions). In all cases, the statutory special provisions shall remain unaffected in the case of final delivery of the unprocessed goods to a consumer, even if the consumer has processed them further (supplier recourse according to §§ 478 BGB). Claims from supplier recourse are excluded if the defective goods have been further processed by the buyer or a third party, e.g. installation in another product.

(2) The basis of our liability for defects is above all the agreement reached regarding the quality of the goods. All product descriptions and manufacturer's specifications which are the subject matter of the individual contract or which are provided by us (in particular catalogues or on our Internet homepage), or were made public at the time of the conclusion of the contract, apply regarding the agreement of conditions.

(3) Insofar as the quality has not been agreed upon, it shall be assessed in accordance with the statutory regulation whether a defect is present or not (§ 434 (1) p. 2 and 3 BGB).

(4) The buyer's claims for defects presuppose that he has complied with his statutory obligations to examine and give notice of defects (§§ 377, 381 HGB). In the case of our products and other goods intended for installation or other further processing, an inspection must in any case take place immediately before processing. Should a defect be established with the delivery itself, during the inspection of at a later point in time, we must be notified of this in writing without delay. In any case, obvious defects must be reported within 10 working days from delivery and the buyer must notify us in writing of any defects not detectable during the inspection within the same period after being established. If the purchaser fails to carry out the proper inspection and/or report defects, we shall not be liable for the non-examination and/or reporting of defects, not notified in time or not properly notified according to the statutory provisions.

(5) If the delivered item is defective, we can first choose whether we will provide subsequent performance by eliminating the defect (rectification of defects) or by delivering a defect-free item (replacement delivery). Unser Recht, die Nacherfüllung unter den gesetzlichen Voraussetzungen zu verweigern, bleibt unberührt.

(6) We are entitled to make the owed supplementary performance dependent on the buyer paying the due purchase price. However, the buyer is entitled to demand a compensation for the to retain an appropriate part of the purchase price.

(7) The buyer has to give us the time and opportunity necessary for the owed supplementary performance, especially to hand over the rejected goods for inspection purposes. In the case of a replacement delivery, the buyer must return the defective item to us in accordance with the statutory provisions. The supplementary performance does not include the removal of the defective item nor the reinstallation, if we were not originally obliged to install it.

(8) The expenses necessary for the purpose of testing and subsequent performance, in particular transport, travel, labour and material costs as well as any dismantling and installation costs, shall be borne by us or we will reimburse in accordance with the statutory provisions if a defect is actually present. Otherwise, we can demand reimbursement from the Buyer for the costs incurred from the unjustified demand for the removal of defects (in particular, testing and transport costs), unless the missing defectiveness was not recognizable for the buyer.

(9) In urgent cases, e.g. if operational safety is endangered or to prevent disproportionate damage, the buyer has the right to remedy the defect himself and to demand compensation from us for the expenses objectively incurred for this. We must be informed immediately, if possible in advance, of any such self-remedy. The right of self-remedy does not exist if we would be entitled to refuse a corresponding subsequent performance in accordance with the statutory provisions.

(10) If the supplementary performance has failed or if a reasonable period of time to be set by the buyer for the supplementary performance has expired without success or if, in accordance with the statutory provisions is dispensable, the buyer can withdraw from the purchase contract or reduce the purchase price. In case of an insignificant defect, however, there is no right of withdrawal.

(11) Even in the case of defects, the buyer's claims for damages or compensation for futile expenses shall only exist in accordance with § 8 and shall otherwise be excluded.

## **§ 8 Other liability**

(1) Unless otherwise stated in these General Terms and Conditions including the following provisions, we shall be liable for any breach of contractual and non-contractual obligations in accordance with the statutory provisions.

(2) We shall be liable for damages - regardless of the legal basis - within the scope of liability for intent and gross negligence. In case of simple negligence we are liable, subject to legal limitations of liability (e.g. care in own affairs; insignificant breach of duty), only:

(a) For damages resulting from injury to life, body or health.

(b) For damages resulting from the violation of an essential contractual obligation (obligation whose fulfillment makes the proper execution of the contract possible in the first place and whose observance is the contractual partner regularly trusts and may trust); in this case, however, our liability is limited to compensation for foreseeable, typically occurring damage.

(3) The limitations of liability resulting from para. 2 shall also apply to breaches of duty by or in favour of persons whose fault we are responsible for according to statutory provisions. They shall not apply if we have fraudulently concealed a defect or have assumed a guarantee for the quality of the goods and shall not apply to claims of the buyer under the Product Liability Act.

(4) Due to a breach of duty which does not consist of a defect, the buyer may only withdraw or terminate the contract if we are responsible for the breach of duty. A free right of termination of the buyer (especially according to §§ 650, 648 BGB) is excluded. In all other respects, the statutory requirements and legal consequences shall apply.

### **§ 9 Limitation period**

(1) Notwithstanding § 438 (1) No. 3 BGB, the general limitation period for claims arising from material defects and defects of title is one year from delivery. If acceptance has been agreed, the limitation period shall commence upon acceptance.

(2) The aforementioned limitation periods of the right of purchase shall also apply to contractual and non-contractual claims for damages of the buyer which are based on a defect of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases.

(3) Claims for damages of the buyer according to § 8 para. 2 sentence 1 and sentence 2(a) as well as according to the Product Liability Act shall, however, become time-barred exclusively according to the statutory limitation periods.

### **§ 10 Choice of law and place of jurisdiction**

(1) These General Terms and Conditions and the contractual relationship between us and the Buyer shall be governed by the law of the Federal Republic of Germany to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) If the buyer is a merchant as defined in the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be our business location in Iserlohn. The same applies if the buyer is an entrepreneur as defined in § 14 BGB. In all cases, however, we are also entitled to bring an action at the place of performance of the delivery obligation in accordance with these General Terms and Conditions or a prior individual agreement or at the general place of jurisdiction of the buyer. Priority statutory provisions, in particular those relating to exclusive jurisdiction, shall remain unaffected.

Iserlohn, 2020 April 4<sup>th</sup>