

## I. Scope of Application

1. All performances and deliveries - including all future performances and deliveries - including consultations, counsel and other supplementary performances are conducted solely on the basis of the following General Terms and Conditions of business, as long as no other written permission explicitly changes, or excludes them. The inclusion of any other General Terms of Business, especially those of the customer, is explicitly objected, especially in the case that the same are transferred to us in a letter of confirmation or any other way.

2. Our terms of sale apply solely to companies in the sense of § 310 sec. 1 BGB (German Civil Code).

## II. Conclusion of Contract

1. All offers, whether made orally or in writing, and catalogue prices are subject to change and therefore non-binding. Contracts are made upon receipt of our order confirmation.

2. All details, measurements, weights, drafts, descriptions, blueprints and drawings in prototype books, pricelists, catalogues or other printed materials are only approximate and have been estimated in the best possible way, but also therefore are non-binding. Changes to product lines and changes to the technical and optical characteristics are reserved.

3. Concluded contracts and other agreements, especially those deviant from the General Terms of sale, delivery and payment, first become binding for us upon written confirmation of the order. Our employees, both internal employees and field workers, are not entitled to conclude agreements which deviate from these general terms of sale, delivery and payment, unless they possess the power of attorney and commission to do the same by virtue of law or explicit permission.

4. Should the customer be of the opinion that the order confirmation deviates from his order, he is to make us aware in writing of the apparent deviant immediately upon receipt, however, at the latest within one week of receiving our order confirmation. Should he neglect to conduct an inspection, and/or inform us immediately, our order confirmation will be seen as correct and binding for both sides.

5. Our customer is obliged to specify the purchase object before conclusion of contract, therefore to inform us about the intended use, type and version and chemical, thermal and mechanical requirements of the object without our prior request.

## III. Prices

1. Our prices are in EURO and are ex-factory in Nuremberg, as long as nothing to the contrary has been agreed upon. This is in addition to the statutory VAT at the amount applicable on the day of delivery. This applies for all prices in tenders, catalogues and price lists, as far as nothing to the contrary is stated.

2. Orders which do not have explicit fixed prices, which we confirm in writing, will be invoiced at the price valid for the day of delivery, as far as the agreed delivery date of the goods ordered is more than 3 months, calculated as of the date of our order confirmation.

3. Prices, which have been confirmed, apply to the receipt of the confirmed amounts at the confirmed time. They do not apply to subsequent orders.

4. Our net catalogue prices are only valid as of a minimum order amount of EURO 100.00. An additional charge of EURO 20.00 for smaller amounts will be applied to order under this limit.

5. The invoice of preproduction costs is reserved, independent of the scope of the order.

6. Additional conditions for make-and-hold orders: make-and-hold orders are made with the goal of ensuring a continual delivery of the contractual object. The confirmed amounts are to be received within the agreed term of contract. Should this not be possible, due to sudden drop in demand, we reserve the right to re-calculate the price retrospectively, at the latest, however, after the contract has terminated. As a rule the entire ordered amount will be packaged. Should this not be possible, the right to adapt prices during the term of contract is reserved, should costs rise due to unforeseen events.

## IV. Postage, Delivery and Self-Delivery Reservation

1. Our stipulated delivery times and appointments are approximate, unless an exact delivery appointment, or an exactly determined delivery period has been agreed upon without any reservations and has been bindingly and explicitly agreed upon by us. If the approximate delivery times and appointments are exceeded, this does not release our customer from the receipt of the goods and the obligation to pay.

2. Should our deliveries not arrive, despite our using a reliable supplier with an equivalent order, we are released from our performance obligations and can rescind the contract. We are obliged to inform the customer immediately that the performance is no longer available and will reimburse all performances made by the customer.

3. Deliveries are generally to be paid and exclude costs of packaging and postage.

4. Deliveries of PVC foam and rubber-metal compounds are made ex works, unless something to the contrary has been explicitly requested.

5. We stipulate the dispatch route and method of transport, carrier and freight carrier, as long as we have not arranged anything different with our customer.

6. Delivery is made at the cost and risk of the customer. Should the customer have the delivery made using his own, or a third parties vehicles, risk is transferred to the customer upon delivery to the carrier, or the customer's transport personnel. Should a delivery have been agreed upon which is free-of-charge, risk is transferred to the customer upon arrival of the vehicle at the premises of the customer. Delivery is made at ground level to the delivery address, or to the location which is nearest for the vehicle. The customer is to ensure the safe receipt and safety of the goods at the delivery location. We are not responsible for any lost parts, or damages made to the goods after risk has been transferred. Should the delivery be delayed on account of circumstances for which the customer is responsible, risk is transferred once the goods are ready to be delivered.

7. Delivered articles are to be received by the customer, even if insignificant defects are apparent, notwithstanding his entitlement to fulfilment and warranty in paragraph IX. Should this not be done, we are entitled to store the goods at our discretion at the cost of our customer.

8. Part deliveries are allowed. They are to be seen as independent deliveries, especially in regard to any supplementary costs that may be incurred in connection with them, e.g. postage, packaging, delivery costs, etc.

9. Deliveries of more or less than the ordered amount are allowed, with a deviation of +/- 10%.

## V. Delay in Delivery

1. Delay in delivery does not occur in the case of force majeure. Force majeure will apply to circumstances which make delivery difficult or impossible for use, especially mobilisation; war; blockade; bans on export, or import; strikes and lock-outs, both on our premises and those of the third party carriers, and all other operational disturbances, fire, transport disturbance or shortage of significant raw materials, aids, operational and constructional materials. The same applies when the events of force majeure or equivalent events occur on our supplier's premises.

2. We are entitled, in all the aforementioned cases of interruptions in performance and delivery for which we are not responsible, to postpone delivery or performance for the duration of the interruption, in addition to a reasonable period of grace in order to re-establish operations or, as far as a delivery has become impossible due to an event to rescind the part of the contract which has not been fulfilled either in whole, or in part. In cases of force majeure, or equivalent circumstances, the customer can demand written confirmation from us as to whether we will rescind the contract, or deliver the remaining parts within a reasonable period of time. Should we not answer within a reasonable period of time the customer can rescind the relevant contracts, or relevant parts of the contract.

3. The regulations in paragraph X apply to our liability for compensation due to the delay in delivery.

## VI. Packaging

We use near to exclusively recyclable packaging that can be disposed of in an environmentally friendly way. As far as stipulated in the Verpackungsverordnung (German ordinance on packaging), we will take our packaging back with us, should this be desired by the customer.

The packaging is to be returned to us free-of-charge. We will invoice the customer at cost price for the treatment and disposal of the packaging.

## VII. Acquisition of tools and their use, Reserved Property on Tools

1. Tool costs are to be paid immediately and without reductions, upon presentation of reference samples. Tools will be stored according to their intended purpose by us and maintained during the agreed service life. Tools will be stored by us for a maximum of 3 years after production is ended. After which the tool will be kept for collection by the customer. Should the customer not collect the tools, we will invoice him for storage and maintenance costs to the set price of EURO 250.00 per annum excluding statutory VAT.

Should the customer not collect the tool, despite official reminder from us, we are entitled to use the tool at our disposal or have it destroyed at the customer's costs after one year after our demand that the customer collect the tool and after prior notification. Any profit made by our use of the tool will be paid to the customer after deduction of our costs.

No insurance protection is guaranteed for customer tools which have been used by us, or stored on our premises, for longer than 5 years

2. Should any tools created by us at the customer's request to complete an order from the same, be stored on our premises, it remains our property. The same applies after complete payment of the tools by the customer. Should the customer provide us with tools, he transfers to us the property rights to ensure the demands labelled in sentence 4. The reservation of title serves the safeguard of all demands from the current business relationship still open upon presentation of the claim for return (reserved ownership). In the case of a delay, we are entitled, at our discretion to use the tools, or to purchase them at the current value. Fig. XIV sec. 4 sentence 1 applies accordingly.

3. Should the customer provide us with individual parts, he is obliged, upon our request, to deliver the parts punctually and free-of-charge for us at his cost, without defects and in proper packaging. The customer is solely responsible for the defect-free state of the parts and materials he has provided and will be held liable for any damages incurred by any defects. We assume no liability for the suitability of the provided parts, nor for their dimensional accuracy.

Our obligation to inspect the goods in regard to the provided individual parts is limited to what can be seen by the naked eye. An excess delivery of 5 % is required to exclude us from this obligation.

4. Should the customer not provide us with individual parts in time, or should the parts not be in defect-free condition, or not be in a condition in which we can use them, the delivery appointment must be re-negotiated.

## VIII. Additional conditions for orders in accordance with drawings and models

1. Even if we can deliver according to drafts, patterns or models, these remain non-binding for us, in regard to the application of normal tolerances for material and production to the design.

2. We reserve the property rights to drafts, patterns and models. They may not be made accessible to third parties.

3. Should we deliver according to the customer's pattern, design or model, the customer is to be held solely responsible and solely liable that we have not infringed on any third party copyrights by doing this.

Should a third party forbid us from producing or delivering goods on the grounds of an infringement against his property rights, we are entitled to cease production and delivery, without legal counsel, until the matter has been finally clarified. The customer carries any costs incurred. The customer is responsible for all direct and indirect damages caused unto us in connection with the infringement of any property rights. The customer is to pay a reasonable sum in advance for any process costs.

## IX. Obligations to Inspect and Reprimand

1. Should a mutual trading agreement be in place, the legal inspection and notification obligations regarding incorrect and faulty deliveries as stipulated in § 377 of the Handelsgesetzbuch (German Commercial Code) apply in accordance with the following regulations. Notification is to be made in writing. Notification is to be sent to Otto Haas KG. Should we have provided the customer with a form in which to record any defects, the notification is only effective if the customer uses this form. Defects are to be stated within a week of the customer becoming aware of them, at the latest, however, after delivery to the customer, unless it is a defect which could not be seen when conducting a proper inspection. The adherence to punctuality is dictated by when we receive the notification.

2. Should the customer be a legal entity in public law, or separate funds under public law, he is to be treated as a tradesman in accordance with § 377 of the Handelsgesetzbuch (German Commercial Code) and is obliged to inspect and notification in accordance with § 377 of the same law. The regulations of figure 1 apply accordingly. The same applies if the contract has been drawn up for the commercial and self-employed profession of the customer (company).

3. Customers, to whom the obligations to inspect and notify as labelled in paragraphs 1 and 2 do not apply, are obliged to inform us immediately as soon as the customer becomes aware of obvious defects, the same applies for those which are not obvious. Should the customer neglect to do this, or not do this in time, the goods will be seen as accepted.

Immediately is a time period of at the most one week since the customer actually becomes aware of the defects, should there be obvious defects, the period begins at the latest as of delivery. A defect is obvious when it is apparent to an average, non-specialised customer who has not been trained in the use of the contractual object and has not conducted a very thorough inspection.

## X. Limitations on Liability

1. Our contractual strict liability for compensation due to slight negligence of contractual, pre-contractual and legal obligations and the extra-contractual strict liability on the grounds of slight negligence are excluded. Furthermore, liability for the grossly negligent conduct of our vicarious agents, who are neither legal representative nor senior members of staff, is also excluded. The release from liability only applies as far as no damages are made to person, or property, as far as no fundamental duty has been infringed upon; damages to person or property include indirect or direct damages to estate caused by the damages to property or person. Liability on the principals of producer's liability is not excluded.

2. As far as liability in fig. 1 is not already excluded, our contractual strict liability for compensation instead of performance or performance not made as agreed on the grounds of slight negligence of contractual, pre-contractual and legal fundamental and secondary obligations and the extra-contractual, strict liability on the grounds of slight negligence is limited to the following regulations (sentence 2 and 3). Liability will be assumed for

- a) every event which obliges us to pay compensation, especially for every act, or cessation, which justifies liability; however, only to a maximum amount for each individual damages case of EURO 1,000,000.00. Several damages from a delivery of the same thing, which all suffer the same defect, will be seen as one individual event which justifies liability; the same applies to several damages which all share the same cause.
- b) For the remainder, every event which obligates us to pay compensation will be paid to the amount of typical foreseeable damages. Fig. 2 a) last sentence applies accordingly.
- c) In the case of a delay in delivery, for every started week of the delay up to 0.5% of the price applicable to the object which was not delivered on time (excluding statutory VAT, freight and other costs), no more, however than 5%.

The limitations for liability stated in letters a) to c) of the aforementioned sentence apply to our advantage equally.

3. The limitation of liability in accordance with figure 2 applies to customers, who are entrepreneurs (fig. 2 sentence 1), legal entities under public law and separate funds under public law, as long as the liability is limited to gross negligence. As far as we cannot be held liable on the grounds of a delay or the infringement of a duty significant to this contract, the limitation of liability applies only to cases of gross negligence of our vicarious agents who are neither legal representative nor senior members of staff.

4. The aforementioned regulations in figs. 1 to 3 also apply for claims from the customer vis-à-vis our vicarious agents and their vicarious agents; the same applies for our legal representatives and organs.

## XI. Guarantee

1. Unlimited liability is assumed for guarantees in regard to the characteristics and shelf-life within the boundaries of the scope of guarantee, for the remainder, liability is regulated according to the regulations in this paragraph. Our strict liability for the replacement of defect damages including the profits lost in accordance with fig. X fig. 1 is excluded and is limited in accordance with fig. X fig. 2 sentence 2 and 3.

2. In the case of justified complaints, we will conduct a replacement delivery, or subsequent performance - at our discretion, upon exclusion of any other guarantee claims - for claims for compensation see fig. XI section 1 sentence

2 below - at our cost. Should the replacement delivery or supplementary performance be defective or impossible to carry out in a certain period of time, the customer can demand a reduction in price or rescind from the contract. We are entitled, should defects be present, to choose between the remedy of the defect and the delivery of an object free of delivery.

3. Claims for defects become statute barred after 12 months, calculated as of the transfer of risk. Should the defect be present on a construction, or defects on an object, which is to be used in its usual intended use on a construction and thereby causes a defect in the construction itself, the legal statute of limitation period of 5 years, § 438 sec. 2 BGB (German Civil Code) applies.

4. The period of limitation in the case of delivery regress in accordance with §§ 478, 479 BGB remains unaffected; the period is 5 years calculated as of the delivery of the defective object.

## XII. Terms of Payment, Arrears and Exclusion of Set-Off

1.1 Our invoices will be due for payment immediately and without any discount when the customer receives the invoice, subject to a diverging written agreement and we must be paid for them franco domicile on the last date of required payment that is stated on the invoice at the latest. We will charge a fee of € 20 in the case of a submitted cheque. The point in time when the credit is entered in our bank account, or when we receive the payment in cash, suffices for timeliness.

1.2 The customer will be informed that he is in default of payment via a reminder that is sent after the due date of required payment, or he will be in default of payment without a reminder when the date of required payment that is stated on the invoice has expired but not more than 30 days after the due date of required payment or after the date when he received the invoice respectively. We will be entitled to charge the customer between € 5 and € 10 for every reminder. We reserve the right to assert a claim for the lump sum of € 40 according to Article 288, Para. (6) of the German Civil Code. All of our debt claims against the customer, which arise from the business relationship, will be due for payment immediately whenever he falls into arrears with paying an invoice. We will only still be obligated to make deliveries to the customer subsequently in return for cash in advance.

2. We only take rediscountable and properly taxed drafts as payment, if that has been explicitly agreed upon. Any supplementary costs caused by our cashing the draft, such as overdraft costs, direct debit costs etc. are to be paid by the customer. Supplementary costs are to be paid immediately. Credits from cheques or drafts are done subject to reservation of its entry after subtraction of expenses from the value date on which we can dispose of the money.

3. The legal regulations apply in regard to the consequences of financial arrears.

4. Payments made to persons acting on our behalf can only be made upon presentation of an explicit, written authority to collect, or a bill received by us.

5. Should several demands exist at once against the customer, we can demand that payments received are offset.

6. Should the customer fall into arrears with his payments, we are also entitled to rescind the contract, or demand payment of compensation on the grounds of non-fulfilment. We can also forbid the further sale and the treatment of the delivered goods and their return, or the return transfer of the goods in the customer's hands at his own cost. The customer authorises us, hereby, irrevocably to visit the customer's operational facilities, revoke all delivered goods and to sell them in private sales at the best possible price and off-set the profits against the open demands after concrete facts about the customer himself or his economic situation are changed, which could lead to payment being ceased in the near future. In the case of arrears, we are also entitled to make use of our property rights, to withdraw the goods, to notify our customer's recipient regarding

the assignment, to collect the demands and security and to use the securities at our disposal.

7. The offsetting of counterclaims made by the customer is only allowed, if the claims are undisputed and have been legally determined. The assertion of a right of retention on the grounds of not recognised or not legally determined counterclaims by the customer is excluded as far as the claims are not based on the same contractual relationship.

8. We are entitled to assign our demands from the entire business relationship to a third party. The customer may not assign his claims and rights from the business relationship, unless we have agreed to the assignment in writing; § 354 a of the Handelsgesetzbuch (German Commercial Code) remains unaffected.

9. Information for any customers who are members of a purchasing association: Our payment claims from the contractual /delivery relationship with you lapses once payment has been credited to our account; in this regard, we agree to conduct payment proceedings with your purchasing association.

### XIII. Data protection

1. We are entitled to treat the customer's data, within the boundaries of the Bundesdatenschutzgesetz, gained as part of this business relationship, or from the business relationship, regardless whether the same comes from a third party, or the customer themselves.

2. Our business partners shall be obliged not to transmit information to unauthorised third parties. These data have to be protected and kept in safe against access and misuse by not authorised persons.

### XIV. Reservation of Property Rights and Preproduction clause

1. The property rights in goods delivered by use is first transferred to the customer, when

- a) the customer has paid the purchase price for the delivered goods,
- b) all of our demands for compensation due to delays caused by the customer being in arrears in paying the purchase price have been fulfilled and
- c) all other demands made by us at the time of delivery vis-à-vis the customer from the current business relationship or later.

2. In accordance with the following regulations, the customer is authorised to further sell the goods subject to retention of property rights and assigns any demands from the further sale to us.

- a) The customer is only entitled to sell the goods to third parties, who have neither excluded, nor limited the assignment of any monetary demands made against them. The customer is not entitled to further sale so long as any of his claims from the further sale are ineffective for reasons labelled in the following sentence, for example as a consequence of a clause inserted to defend unlawful interference in the customer's Terms and Conditions. The customer is also only entitled to further sale, if the goods subject to the retention of property rights have been declared as goods for further sale when they were delivered to him.
- b) The assignment of any demands from the further sale by the customer to us is limited to the invoiced value of the delivered goods.
- c) The customer is entitled to collect the demands assigned to us; this does not apply if and as long as the customer is in arrears with a secured demand (fig. 1), is unable to pay, or if insolvency proceedings have been commenced against him.

3. Should the customer create new moveable property by treating, or reconstructing the goods delivered, it is agreed that we will be seen as producers in accordance with the following regulations and will acquire the property rights to the new moveable property (processing clause).

- a) The acquisition of property rights by us on newly created moveable property is limited to a co-ownership share of the value of the newly created moveable property in relation to the value of the goods delivered by us, which were treated, or re-constructed. The value of the goods delivered by us at the point of treatment is decisive. In doubt, it is to be assumed that the value of the delivered goods, which have been treated or reconstructed, is the invoiced value.
- b) The customer is entitled to further sell the newly created moveable property and assigns any demands he has as a result of the further sale of the property to us; fig. 2 letter b) applies analogously. The customer is entitled to collect the assigned demand; figure 2 letter b applies analogously.
- c) The transfer of rights to the customer of the newly produced moveable property is agreed, subject to postponement upon occurrence of the stipulations labelled in figure 1 letters a) to c).

4. The customer is obliged to inform us immediately should a third party gain access to the goods subject to retention of our property rights and to provide us with all information and documentation which is useful and requisite to the assertion of our property rights; this applies especially to third party seizure. The newly created moveable property as stipulated in the processing clause (figure 3) is also seen as goods subject to the retention of property rights. The customer is to carry the costs of any third party access, requisite to prevent access, especially as part of a third party motion to vacate and the re-acquisition of the property. The obligation to inform us immediately also exists in regard to the damage, or destruction of the goods subject to the reservation of property rights. Furthermore, the customer is obliged to inform us immediately if the goods subject to the reservation of property rights are moved to a different location.

5. Should the customer fall into arrears, we are entitled to demand the return of the goods subject to reservation of property rights, or the moveable property stipulated in the processing clause (fig. 3). The demand for return of the goods is not to be seen as the rescission of the contract, as long as § 503 section 2 BGB (German Civil Code) does not apply.

6. We are obliged to release any securities owed to us, upon the customer's request, in as far as the realisable value of our securities does not exceed the demands to be secured by more than 10%; the choice of which security is to be released is made by us.

### XV. Return of Goods

We are entitled to deny receipt of any goods which are returned to us without our prior explicit permission. Any goods returned to us are to be in excellent condition. The return of goods is to be free of freight charges and always at the returner's own risk, even if we collect it. Credit is made according to the invoiced amount minus the costs incurred to use and any loss in value, at the least, however, a 10% reduction in the invoiced value.

A delivery note is to be attached to the returned goods, which must clearly state the reasons for returning the goods and under which delivery note and invoice number the goods were sent by us to the customer. We may deny credit without these details.

Returned goods with a value of less than EURO 50.00, will not be credited due to the handling expenses and administration costs. Curtailments, or

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reductions or retentions due to the return of goods, without our having issued a credit note, will not be recognised by us.

#### **XVI. Jurisdiction, Place of Performance, Applicable Law**

Place of fulfilment and sole jurisdiction in regard to performances, claims and obligations, including those arising from draft or cheque proceedings between tradesmen in the sense of §§ 1 et. seq. HGB (German Commercial Code) is our registered offices in Nuremberg. We are, however, entitled to file a lawsuit against the customer at the court which has sole jurisdiction over him.

All legal relations between us and our customer, which result from and are in connection with the entrance, implementation and conclusion of contracts and our legal relationship, be they based on contractual, quasi-

contractual, tort or any other legal basis, are to be judged according to the laws of the Federal Republic of Germany applicable to the legal relationship between domestic parties at the time of concluding the contract; the regulations of the Hague Purchase Convention and the Uncitral Convention are excluded. The same applies to questions of form.

#### **XVII. Salvatory Clause**

Should one of the above clauses be or become ineffective, the remaining stipulations remain unaffected. The parties are hereby in agreement that the ineffective stipulation will be replaced by an effective regulation which is reasonable for both parties, which comes closest to the economic intention of the ineffective regulation.

**Our previous conditions are hereby ineffective.**