

# **General Terms and Conditions of Sale**

of

## **HADE Heinrich Dornseifer KG**

### **§ 1 Scope, application**

- (1) The following terms of business are the basis of all our quotations, supplies and services and are agreed by us on acceptance of order. The acceptance of order is agreed where we either confirm this or satisfy the order by despatching the goods. The scope of the supplies or services (hereinafter: Supplies) shall be determined on the basis of both parties' written statements.
- (2) Our terms of business take precedence over terms of our contractual partners that differ in content. Individual cases of deviation from our conditions must have our express written agreement.
- (3) Exclusively these conditions of sale shall apply to undertakings, legal entities under public law and special funds under public law within the meaning of S.310 para. 1 German Civil Code (Bürgerliches Gesetzbuch or "BGB").
- (4) These conditions of sale shall apply also to all future transactions with the purchaser, in so far as they involve legal transactions of a similar nature.

### **§ 2 Quotation and conclusion of contract**

Where an order is deemed a quotation under S.145 BGB, we may accept this within two weeks.

### **§ 3 Documents provided**

We retain proprietary rights and copyrights in all documents provided to the purchaser in connection with the placing of the order, such as calculations, drawings etc. These documents may not be disclosed to third parties, unless we grant the purchaser our express written consent. Where we do not accept the offer of the purchaser within the period at § 2, these documents must be returned to us immediately.

### **§ 4 Delivery, delivery period**

- (1) Partial deliveries are permitted where they are reasonable for the contractual partner or where not expressly agreed otherwise.
- (2) The commencement of the delivery period specified by us is subject to the timely and orderly performance of the obligations of the purchaser. The defence of failure to perform the contract is reserved.
- (3) The delivery period is complied with where the goods have left the works by the expiry of the period or in the case of deliveries ex works where readiness for shipment has been communicated by the expiry of the period.
- (4) In the event that our performance is late, the damages of the contractual partner for delay shall be limited to the typically foreseeable damage. In particular there shall be no compensation for loss of profit or production downtime costs.

- (5) If despatch or shipment is delayed at the request of the contractual partner for more than a month after notification of readiness for shipment, we may charge the contractual partner for each month or part thereof storage fees of 0.5 % of the price of the objects for delivery, but a maximum total sum of 5 %, unless we can provide evidence of higher storage costs. The contractual partner can provide evidence that the storage costs have not been incurred at all or are significantly less than the flat rate.
- (6) Force majeure, unrest, strikes, lockouts, breakdowns of any kind, governmental measures, non-arrival of materials deliveries and other delays in the production process that occur without fault on our part, will postpone the delivery date appropriately, but not for more than 2 months from the agreed date. After expiry of the 2 months each side has the right to withdraw. Claims for compensation may not be made in the case of any of the specified events.
- (7) If the ordering party is late in acceptance or breaches culpably other obligations to cooperate, we shall then have the right to demand compensation for the damage incurred thereby including any additional expenses. The right to make additional claims is reserved. Where the aforesaid conditions are satisfied, the risk of accidental destruction or accidental deterioration of the purchase object passes to the purchaser when the latter is in default of acceptance or debtor's obligations.

## **§ 5 Prices and payment**

- (1) Save where otherwise agreed in writing, our prices apply ex works excluding packaging and value added tax at the currently applicable rate. Costs of packaging shall be invoiced separately.
- (2) Payment of the purchase price must be made only into the account specified overleaf. Deduction of discount is only permissible by special agreement in writing.
- (3) The purchase price must be paid subject to the second sentence within 8 days after invoicing with a 2 % discount or within 30 days net. In the case of goods with a value up to Euro 100.00 net inclusive and for deliveries of goods outside Germany payment is due net immediately. Interest for late payment will be charged in the sum of 9 % above the respective base rate p.a. with a flat rate charge of €40.00. Claims for higher damages due to default are reserved.
- (4) If the costing factors for determining the price (production materials, power, operating materials, wages and salaries invoiced etc.) alter materially during the period from conclusion of the contract until the contractually scheduled date of delivery, we are entitled in order to compensate for such cost increases to require the contractual partner, altering the quoted or confirmed prices, to agree to new prices. If no agreement can be reached, we may withdraw from the contract. In the case of reduction of the costing factors mentioned in the first sentence the contractual partner will have by analogous application of the aforesaid provision a claim to agreement of a corresponding price reduction and in the absence of agreement the right to withdraw from the contract. Material in the meaning of the second sentence is a change in the costing factors where between conclusion of the contract and the contractually scheduled date of delivery or acceptance a costing difference of more than 10 % has occurred.

## **§ 6 Rights of retention, set-off**

- (1) The contractual partner is entitled to exercise a right of retention only to the extent that its counterclaim is based on the same contractual relationship.
- (2) The contractual partner can only set off such claims as are undisputed or have been established in law.

## **§ 7 Transfer of risk on shipment**

If the goods are despatched to the purchaser at its request, then the risk of accidental destruction or accidental deterioration will pass on despatch to the purchaser and at the latest on departure from the works/warehouse. This shall apply regardless whether the despatch of the goods occurs at place of performance or which party bears the freight costs.

## **§ 8 Retention of title**

- (1) We retain title in the goods supplied until payment in full of all liabilities arising from the contract for supply. This shall apply also for all future Supplies including where we do not constantly and expressly refer to this. We are entitled to take back the goods purchased where the purchaser acts in breach of contract.
- (2) Until title has passed to it, the purchaser must treat the goods purchased with care. Where maintenance and inspection works have to be carried out, the purchaser must conduct these promptly at its own cost. Until title has passed to it, the purchaser must inform us immediately in writing if the object supplied is distrained or otherwise subjected to the intervention of any third party. Where the third party is not able to pay to us the court and other legal costs of an action according to S. 771 German Civil Code (Zivilprozessordnung), the purchaser shall be liable for the loss incurred by us.
- (3) The purchaser may sell the goods subject to retention of title in the normal course of business. The claims against customers from the disposal of the goods subject to retention of title are hereby assigned by the purchaser to us in the sum of the final invoice amount agreed with us (including value added tax). This assignment shall be valid regardless of whether the goods purchased are resold with or without further processing. The purchaser will remain entitled to collect receivables even after assignment. Our authority to collect the receivables ourselves is not affected thereby. We shall however not collect the receivables for so long as the purchaser fulfils its payment obligations from the proceeds collected, is not in default of payment and in particular there is no application to commence insolvency proceedings or a cessation of payments.
- (4) The processing, modification or remodelling by the purchaser of the goods purchased shall always be in our name and on our behalf. In this case the reversionary interest of the purchaser in the goods purchased will continue in the reconstructed object. Where the goods purchased are processed with other objects not belonging to us, we shall acquire co-ownership of the new object in the proportion of the objective worth of our goods purchased to the other objects processed with them at the time of modification. The same shall apply in the case of combination. Where the combination occurs in such a way that the materials of the purchaser are to be considered the principal object, it shall be deemed agreed that the purchaser transfers to us proportional co-ownership and will safeguard for us the sole or co-ownership accruing to us. To secure our claims against the purchaser, the purchaser also assigns to us such claims as accrue to it against a third party from combination of the goods subject to retention of title with real property; we hereby accept such assignment.
- (5) We undertake to release the securities to which we are entitled at the request of the purchaser to the extent that they exceed the receivables to be secured by more than 20%.

## **§ 9 Warranty, Notice of Defects and Recourse, Manufacturer's Recourse**

- (1) The warranty rights of the purchaser are conditional upon the purchaser having properly fulfilled its duties to inspect and notify defects under § 377 German Commercial Code (Handelsgesetzbuch). For this purpose it must check the goods received immediately and notify us promptly in text form of any complaints, and of obvious defects immediately, at the latest within 5 working days after receipt of the delivery and of hidden defects immediately following discovery of the defect.
- (2) Claims in respect of defects shall be time-barred 12 months after handover. Parts subject to wear and tear are excluded from this.
- (3) If the delivered goods already had defects at the time of transfer of risk we will, at our choice, either repair the goods or supply replacement goods, provided that the notice of defects was given in due time. We must be given reasonable time and opportunity in which to remedy the defect. If this is refused we shall be released from our warranty obligations with respect to such defect.
- (4) The right is reserved to the contractual partner, in the event of failure of supplementary performance or where we refuse both repair and replacement or where supplementary performance is not reasonable, to reduce the purchase price or remuneration or at its election to withdraw from the contract and claim compensation. Our agreement must be obtained before returning any goods. A repair shall be deemed to have failed on the second unsuccessful

attempt, if nothing else in particular results from the type of item or defect or from the other circumstances.

- (5) There will be no claims for defects in the case of only slight variation from the agreed quality or only a minor impairment of usability, in cases of natural wear and tear or such damage that occurs after the passage of risk due to incorrect or negligent handling, excessive loads, unsuitable operating equipment, or by reason of particular external influences that are not provided for in the contract. Likewise if repair work or modifications are carried out improperly by the purchaser or a third party, claims for defects and the consequences of such works may not be made. If there are objective signs of one of the aforesaid circumstances, in particular of inexpert interference, the contractual partner must prove that these had no influence on the defective delivery. It is open to us to provide evidence to the contrary.
- (6) Claims of the purchaser in respect of expenditure required for the purpose of supplementary performance, in particular transport, travel, labour and materials costs are excluded to the extent that the expenditure increases because the goods supplied by us have subsequently been taken to a location other than the purchaser's place of business unless the transfer is in accordance with the intended use.
- (7) Claims to recourse by the purchaser against us may be made only to the extent that the purchaser has not reached with its customers any agreements going beyond the statutory mandatory claims for defects. For the extent of the purchaser's claims to recourse against us there shall also apply analogously paragraphs 4-6.
- (8) We shall be liable under the contractual warranty for damage – except in the case of fatal injury or personal injury or damage to health – only for wilful intent and gross negligence including the wilful intent and gross negligence of our representatives and agents, save where agreed otherwise hereinafter. The liability for simple or slight negligence is excluded where it does not involve the breach of a material contractual obligation within the meaning of the case law of the German Federal Court of Justice (Bundesgerichtshof). Where the foregoing exclusion of liability does not apply by reason of the breach of a material contractual obligation, we shall be liable only for the typically foreseeable damage for this type of contract. Additional claims of the purchaser are excluded. The foregoing limitations or exclusions of liability shall not apply in the case of breach of pre-contractual information and disclosure obligations.
- (9) Our liability under the German Product Liability Act (Produkthaftungsgesetz) is not affected.

## **§ 10 Liability apart from liability for defects**

The liability provision in § 9 para. 7 shall apply also for damage apart from liability for defects.

## **§ 11 Applicable law, place of performance, jurisdiction**

- (1) This contract and the entire legal relations between the parties are subject to the law of the Federal Republic of Germany excluding the UN Convention on Contracts for the International Sale of Goods (CISG).
- (2) Place of performance and exclusive jurisdiction for all disputes arising from this contract is at our place of business save where otherwise provided on the order confirmation.

## **§ 12 Final provisions**

- (1) Should individual provision of the contract with the contractual partner including one of the aforesaid provisions of these TCB be void, invalid or impracticable for any reason, the validity of the remaining provisions and of the underlying contract shall not be affected thereby.
- (2) Headings in these terms of business are for clarity only and do not define or limit the provisions of these TCB as such and in particular not in relation to the content of the individual sections.

HADE Heinrich Dornseifer KG, August 2017