

GENERAL TERMS AND CONDITIONS OF BUSINESS

§ 1 General - Scope of application

All quotations and contracts concerning manufacture and sale of our delivery Items are exclusively subject to our General Terms and Conditions of Business.

The latter are deemed to have been accepted when an order is placed, even if the Buyer refuses to acknowledge other terms and conditions under the Buyer's own terms and conditions. On placing an order, the Buyer accepts the validity of our General Terms and Conditions. This also applies if the Buyer does not expressly object to the validity of our General Terms and Conditions of Business, and the contract is fulfilled without contradiction.

Failure to object to or take a position on the Buyer's terms and conditions does not by any means constitute acknowledgment or approval thereof. Any conflicting general terms and conditions of business issued by the Buyer are herewith rejected and shall not become subject matter of the contract.

Confirmation on the Buyer's order form to the effect that we have accepted an order does not exclude the exclusive basis of the contract of our General Terms and Conditions of Business but serves solely to conform to the Buyer's EDP requirements. Acceptance of one, several or all of the Buyer's provisions requires agreement thereto in each individual case in written form.

Our General Terms and Conditions of Business are applicable exclusively to companies in terms of § 310 subsection 1 BGB (German Civil Code).

§ 2 Validity of quotations

Our quotations are subject to confirmation. The orders placed require our written confirmation to be deemed binding.

§ 3 Legal validity of orders and agreements

Insofar as we specifically use written order confirmations, the order shall not become legally valid until it has been confirmed. As a result, the contractual relationship is governed exclusively by the content of the confirmation in conjunction with our General Terms and Conditions of Business.

The legal validity of any agreements made by telephone or other verbal agreements, accords or individual arrangements made with our administrative or field staff is subject to our written confirmation.

The same applies to collateral agreements, modifications or supplements to the contractual agreements, the legal validity of which requires our written confirmation.

§ 4 Prices

Unless otherwise stipulated or approved by us, our prices are understood to be in the case of 'delivery ex works': 'ex works in the respective country of manufacture', in the case of 'ex warehouse': 'from Mannheim', plus packing and the respective value added tax in force.

The prices are valid for four months from the contract date. In the event that a delivery period of over four months has been agreed, we are entitled to pass on to the Buyer any increase in the costs incurred in the intervening time for procurement, manufacture, delivery, installation, etc. by increasing the prices correspondingly.

The prices apply to the number of items, materials and technical equipment specified in our quotations.

If these should change due to a situation arising after the order has been placed, in any event not by a breach of good faith on our part, we reserve the right to modify our performance of the contract and prices accordingly. We shall immediately communicate the occurrence of such a situation and the relevant facts.

If it is unreasonable to expect the Buyer to accept the modification due to avoidability, materiality or for any other important reason, the Buyer is entitled to rescind the contract immediately without any claims being made by either party for damages arising therefrom.

In the event that the order placed by the Buyer does not conform to number of items, materials or technical equipment specified in the Buyer's inquiry or in our quotation, we reserve the right to refuse the order, to withdraw our quotation and to submit a new quotation in line with the changes.

§ 5 Delivery periods

The lead times stated in our quotations are approximate periods and have been calculated to the best of our judgment, in consideration of the prevailing delivery situation and production capacities on the date of issue.

Adherence to lead times is subject to us obtaining the supplies ourselves at the correct time. We shall inform the Buyer as soon as possible if there may be a delay.

Insofar as the delivery is not ex warehouse - warehouse goods are subject to prior sale - the delivery periods shall be agreed upon in each individual case after all the technical criteria have been taken into consideration and shall be subject to our written confirmation.

In the case of unforeseen delays in delivery due to force majeure, e.g. mobilisation, war, riot, natural disaster or similar events, e.g. strike, lockout, fire, shortage of raw materials or other operating troubles, we are entitled to extend the delivery period accordingly. If the resulting delay is longer than four weeks, we are authorised to rescind the contract without the Buyer deriving any claims for damages or for reimbursement of expenses therefrom.

We shall immediately communicate the occurrence of such a situation and the relevant facts.

In the event that we fall behind schedule and the Buyer suffers a loss therefrom, the Buyer is entitled to demand flat-rate compensation for default. For each full week of delay this amounts to 0.5 %, in any event in total maximum 5%, of the net value of that part of the total delivery which, as a result of the delay, cannot be used within the prescribed period or in accordance with the contract.

In the event that the Buyer - subject to exceptional cases under law - grants us a reasonable period of time after the due date to fulfil the contract and the deadline is not met, the Buyer is entitled to rescind the contract on the basis of the applicable statutory provisions.

Further claims arising from delays in delivery are determined exclusively by § 7 of these terms and conditions.

§ 6 Warranty claims

We give warranties for material defects and defects of title to the goods supplied to the exclusion of further claims - subject to the following § 7 - as follows:

Material defects:

All those parts which prove to be defective as a result of a situation arising prior to the risk passing to the Buyer are to be, at our discretion, repaired or replaced free of charge so as to be free of defects. We are to be notified in writing immediately on ascertainment of such defects. Replaced parts shall become our property.

Subsequent to mutual agreement, the Buyer shall grant us the time and opportunity required to carry out all the repairs and replacements which appear necessary to us; if this is not the case, we shall be released from any liability for the consequences arising therefrom. Only in urgent cases in which industrial safety is jeopardized or prevention of excessively serious damage is at risk, whereby we are to be notified immediately, is the Buyer entitled to repair the defects or have such repaired by a third party and to demand reimbursement from us of the necessary expenses.

Of the costs directly incurred by repairs or replacements we shall bear - insofar as the complaint proves to be justified - the costs of the replacement part plus dispatch. We shall also bear the costs of disassembly and assembly as well as the costs of the provision, if required, of the necessary personnel including travel expenses, insofar as this does not impose an unreasonable financial burden on the Supplier.

Statutory provisions entitle the Buyer to rescind the contract if we - subject to exceptional cases under law - allow a deadline to pass twice without the subsequent performance required due to a material defect. If it is merely a minor defect, the Buyer is only entitled to reduce the contractual price. The right to reduce the contractual price is otherwise excluded. Further claims are determined by the following § 7.

No warranty is given in particular in the following cases: inappropriate or improper use, faulty assembly or commissioning by the Buyer or a third party, natural wear, faulty or negligent handling, irregular maintenance, inappropriate equipment or facilities.

In the event that the Buyer or a third party carries out the repair improperly, we are not liable for the consequences arising therefrom. The same applies if modifications are made to the item supplied without our prior consent.

Defects of title:

In the event that the use of the item supplied results in an infringement within the country of industrial property rights or copyrights, we shall essentially procure the right to further use for the Buyer at our expense or we shall modify the item supplied in such a way that is acceptable to the Buyer and that does not constitute an infringement of the property rights.

If this is not economically viable or if this cannot be accomplished within a reasonable period of time, the Buyer is entitled to rescind the contract. We are also entitled to rescind the contract under these particular conditions.

The obligations stipulated above in the section 'Defects of title' are - subject to the following § 7 - conclusive for us in the case of an infringement of property rights or copyrights. They arise only if

- the Buyer notifies us immediately of claims asserted against infringement of property rights or copyrights,
- the Buyer supports us to a reasonable extent in our defence against the claims asserted or, respectively, allows us to implement modifications as stipulated in the above section,
- we reserve all rights to take any defensive measures including extra-judicial settlements,
- the defect of title is not caused by an instruction given by the Buyer and
- the infringement of rights has not been caused by the Buyer changing the item supplied without proper authorization or contrary to the contractual agreement.

§ 7 Liability

We are liable for damage which has not been caused directly to the item supplied - irrespective of the legal grounds - exclusively in the case of

- a. specific intent,
- b. gross negligence on the part of the owner/executive bodies or managerial staff,
- c. defects we have fraudulently concealed or the absence of which we have guaranteed,
- d. culpable injury to life, body, health,
- e. defects of the item supplied, insofar as the Product Liability Act stipulates liability for personal injury or damage to privately used property.

In the case of culpable infringement of essential contractual obligations, we are also liable for the gross negligence of non-managerial staff and for simple negligence, in the latter case restricted to damage which can be reasonably anticipated contractually.

Any further claims are excluded.

§ 8 Limitation of actions

Any claims made by the Buyer - irrespective of the legal grounds - are subject to a limitation period of 12 months. Claims for damages in accordance with the above § 7 are subject to statutory limitation periods. They also apply to defects of a building structure or to items supplied which have been used for a building structure according to the customary manner of use and have caused the defectiveness of the building structure.

§ 9 Tools

Contributions made by the Buyer to costs for the moulds and other tools as well as technical equipment manufactured by our supplying plants do not cancel out the exclusive title of ownership of our supplying plant unless otherwise provided for by individual contract.

§ 10 Drawing manuals/industrial property rights

The inquiring or ordering party or the Buyer assume any risk of an infringement of industrial property rights for special designs of parts according to drawings submitted by the Buyer. The inquiring or ordering party or the Buyer release us from any claims made by third parties in the event of culpable infringement of such property rights.

§ 11 Reference samples/prototypes

In the case of orders of parts based on samples or drawings, the Buyer shall be presented with a reference sample for written approval. Any complaints arising after approval of the reference samples shall not be taken into consideration if the parts supplied conform to the reference samples.

§ 12 Make-and-hold orders

If delivery of the goods for make-and-hold orders or the remaining quantities thereof is not requested within three months, we are entitled, after successfully stipulating a period of grace, which shall however be a maximum of four weeks, to insist on immediate acceptance of delivery or to rescind the contract. In these cases, we are also entitled to assert damages if the Buyer is responsible for not requesting delivery.

§ 13 Cancellation of orders

The cancellation or modification of an order is subject to our prior written approval.

In this case, we shall issue an invoice in particular for already finished parts as well as for tools which have been specially constructed to fulfil an order and other costs that can no longer be avoided.

§ 14 Retention of title

1. We shall retain title of the goods until full payment has been made of all our claims arising from the business relationship with the Buyer, including incidental claims, claims for damages and the honouring of cheques and bills.
2. We shall also retain title if any individual claims are included in an open account and the balance has been calculated and allowed.
3. If the goods subject to retention of title are processed by the Buyer into a new chattel, the processing shall take place without any liability on our part. The new chattel shall become our property. If the goods are processed, mixed or mingled with goods which do not belong to us, we shall acquire co-ownership of the new chattel pro rata of the invoice value of the goods subject to retention of title and the total value.
4. The Buyer is only entitled to resell, process or install the goods subject to retention of title in consideration of the following provisions and provided that the claims stipulated in item 5) have indeed been transmitted to us:
 5. We shall revoke the Buyer's authorization to resell, process or install the goods subject to retention of title in the regular course of business in the case of sustained deterioration of the Buyer's financial position, in any event no later than on suspension of payments by the Buyer or on application or institution of insolvency or extra-judicial composition proceedings over the Buyer's assets.
6. a) The Buyer herewith assigns to us the accounts receivable, together with all ancillary rights arising from the resale of the goods subject to retention of title and including any outstanding bills.
b) If the goods have been processed, mixed or mingled and we have acquired co-ownership in this case to the amount of their invoice value, we are due the account receivable from the purchase price proportionate to the value of our rights to the goods.
c) If the Buyer installs goods subject to retention of title on a piece of land, the Buyer herewith assigns the claim arising therefrom for remuneration to the amount of the invoice value of the goods subject to retention of title, together with all the ancillary rights including such to the granting of a mortgage strongly dependent on the existence of the claim which has priority over the others.
d) If the Buyer has sold the accounts receivable to a proper factoring system, our accounts receivable shall be due with immediate effect and the Buyer shall assign to us the accounts receivable from the factor in favour of the Buyer and immediately transfer the sales proceed to us. We herewith accept this assignment.
7. Provided it meets all its payment obligations, the Buyer is authorized to collect the assigned accounts receivable. The authorization for collection is subject to revocation, in any event not later than on default of payment by the Buyer or in the case of substantial deterioration of the Buyer's financial circumstances. In this case we are herewith authorized by the Buyer to advise the customers of the assignment and to collect the accounts receivable ourselves.

The Buyer is obliged to provide us, at our request, with an itemized statement of the accounts receivable to us with the names and addresses of the customers, the amount of the individual accounts receivable,

the invoice date, etc., and to provide us with all the necessary information to assert the assigned claims and to permit us to verify this information.

8. If the invoice value of our existing collateral exceeds that of all the accounts receivable including incidental claims (e.g. interest, costs) by over 20%, we are obliged, at the request of the Buyer or of a third party prejudiced by the excessive collateral, to release part of the collateral at our discretion.
9. Pledging or transfer by way of security of the goods subject to retention of title or of the assigned accounts receivable is not permitted. We are to be notified immediately by telephone or in writing of any seizure of property and of the pledgee.
10. If we take back the goods supplied on the basis of retention of title, this constitutes rescission of the contract. On taking back the goods supplied we are authorized to utilize them and to set off the proceeds from such utilization - less reasonable utilization costs - against the Buyer's liabilities.
11. The Buyer shall hold the goods subject to retention of title in safe custody for us at no charge. It shall insure them adequately at replacement value against the customary risks, e.g. fire, theft and water at its own expense. The Buyer herewith assigns to us any claims to damages which it is due from damage of the nature specified above against insurance companies or other parties liable for compensation to the amount of the invoice value of the goods. We herewith accept the assignment.
12. All claims and rights arising from the retention of title to all the special forms stipulated in these terms and conditions remain in force until any contingent liabilities which we have incurred in the interest of the Buyer have been completely released.
13. The retention of title is conditional in such a way that the ownership of the goods subject to retention of title is automatically transferred to the Buyer on full payment of its liabilities arising from the business relationship and the assigned accounts receivable shall be due to the Buyer.

§ 15 Terms of payment

a) Payment

Our invoices are payable within 14 days of receipt of invoice without any deduction. Discounts require our written consent. Invoices for tool costs are essentially excluded from discount deductions. The terms of payment agreed with us apply in all other respects.

b) Minimum invoice values

The minimum invoice value amounts to €150.00 for delivery ex warehouse Mannheim. In the case of parts to be manufactured the minimum invoice value increases according to the type and to the quantity of the parts for each item. We shall give the precise value on request or in our order confirmations. Minimum invoice amounts are subject to the respective value added tax in force and are payable immediately on receipt of the invoice without any deduction.

c) Default of payment

If the Buyer does not pay the invoice amount by the 14th day calculated from receipt of invoice, the Buyer is deemed in default of payment. The value date on our account is decisive for the timeliness of the payment. In the case of default the Buyer shall pay us default interest to the amount of 10% points above the respective basic interest rate. Assertion of a further claim for damages is not excluded.

If the Buyer suspends its payments or applies for insolvency proceedings over its assets or for extra-judicial composition proceedings, we are alternatively entitled to rescind the contract with respect to the unfulfilled part.

d) Set-off

With the exception of undisputed claims or claims which have become res judicata the Buyer is not entitled to set off any claims or withhold any payments.

e) Dispatch

Dispatch and deliveries are effected freight collect and at the Buyer's risk. Even if freight paid delivery has been agreed, this is at the Buyer's risk.

§ 16 Place of performance/place of jurisdiction

The place of performance for delivery, payment and all claims resulting from the contract is our registered place of business. If the Buyer is a business person, entity under public law or special fund under public law, the exclusive place of jurisdiction for any disputes arising directly or indirectly from the contractual relationship shall be our registered place of business. The contractual relationship is governed exclusively by the law of the Federal Republic of Germany. Application of the United Nations Convention of 11.04.1980 on contracts for the international sale of goods is excluded.

Hutchinson GmbH, Amtsgericht Mannheim HRB 5852
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