

## **General Terms and Conditions of Sale and Supply for H.G.S. GmbH**

### **1. Quotation process and signing of contract**

- (1) Our General Terms and Conditions (GTCs) of Sale and Supply shall form the sole basis of any quotations we submit and agreements that we enter into, with the exception of those for which our Terms and Conditions of Repair and Assembly shall apply. Any terms and conditions set out by the customer that contradict, deviate from, or are beyond the scope of our own GTCs shall not form part of the contract. This also applies even in the event that, without renewed objection being made, we sign a contract, provide goods or services contracted and in particular accept payments towards the purchase price, in the knowledge that a customer has terms and conditions that contradict or deviate from our own.
- (2) Oral agreements – irrespective of their nature – will only be considered binding if we have confirmed these in writing. This applies also to any supplementary, amended or collateral agreements. Should both parties agree to waive this requirement for written confirmation, such an agreement must also be in writing.
- (3) The customer is bound by his order for a period of four weeks.
- (4) We reserve all rights to drawings, plans and calculations.
- (5) Agreements / contracts are subject to German law. The provisions of the UN Convention on Contracts for the International Sale of Goods shall expressly not apply.
- (6) The customer may only withdraw from claims or obligations arising from this agreement with our written consent.

### **2. Scope of obligation to supply**

- (1) Our written confirmation of order is definitive in respect of the scope of any contractual supply of goods or services. Our confirmation of order has validity only on condition that any outstanding payments are settled and that a credit check does not return any negative indications.
- (2) We reserve the limited right to make technical alterations and improvements to any contractual supplies or services insofar as we can demonstrate that, in the specific circumstances of each case, the customer might reasonably be expected to accept them, especially if the alteration is essential to the fulfilment of the contractual purpose. Appropriate and locally applicable prices shall apply for such alterations in services.

### **3. Prices**

- (1) All prices given in our sales and price lists, quotations, order confirmations and delivery notes are to be understood as net ex works or warehouse. VAT at current rates and packaging costs will be charged in addition. This condition applies unless otherwise agreed in writing.
- (2) The prices given are based on supply prices, raw material and energy prices, wage costs, social contributions, freight charges, duties and taxes prevailing at the time of the quotation and having a direct or indirect influence on the cost of production. In the event that one or more of these underlying costs should change, we reserve the right to make an appropriate price adjustment if a period of more than four months elapses between the date on which the contract was signed and the agreed date of supply, unless the customer is covered by § 310 of the German Civil Code (BGB).

### **4. Payment**

- (1) In principle, payment becomes due in cash at each stage of the supply process and in any case at the latest eight days after the customer has been informed that the goods are ready for despatch. Insofar as special periods for payment have been agreed, these shall commence on the day of delivery. This does not apply if the customer requests a later delivery or if circumstances cause a delay in delivery for which we cannot be held liable. In such cases, due date is calculated not from the day of delivery but the day on which the customer was informed

that the goods were ready for despatch (see Sentence 1).

- (2) Part deliveries are permissible, insofar as this is not unacceptable to the customer, especially when the part delivery is applicable for the customer in terms of the contractual purpose, substantial additional costs to the customer are not thereby incurred, and the remaining delivery is guaranteed. Part deliveries oblige the recipient in turn to make part payments to an appropriate amount.
- (3) Cheques and bills of exchange are only accepted on a provisional basis until they are credited to our account. Renegotiation and prolongation are not considered as fulfilment. Collection charges, discount charges or any other charges are to be borne by the customer.
- (4) Retention of payment, price reduction or offset is only permissible in cases where a counterclaim, price-reduction right or retention right have been acknowledged by us in writing or have been upheld in a court of law.
- (5) If circumstances are brought to our attention after the agreement has been signed that lead us to doubt the creditworthiness of the customer, we are entitled to make the supply of further goods or services dependent on the customer demonstrating adequate sureties within an appropriate period of time. If the customer is unable to demonstrate such sureties within a reasonable length of time, we are entitled to withdraw from the agreement and to claim compensation for default.
- (6) If the customer falls behind with their payments, we are entitled to add interest at the respective rates in force in terms of the German Civil Code (BGB § 288, Sections 1 and 2). This provision will not apply if we can demonstrate that we have incurred greater costs as a result of the default on payment. Nor will it apply if the customer can demonstrate that no costs or minimal costs have arisen as a result of the delay in payment.

## **5. Delivery times**

- (1) Insofar as the provisions of § 310 of the German Civil Code (BGB) apply to the customer, sale and delivery of the goods and delivery times are subject to correct and punctual supply to ourselves.
- (2) The period of delivery commences only when all technical and commercial issues relating to the order have been resolved. If it has been agreed that the goods for delivery should be dispatched elsewhere than our place of business, the period of delivery will be deemed to have been fulfilled if the goods to be supplied have been forwarded to the carrier, freight company, or other agent entrusted with their transport before this period has elapsed, unless otherwise agreed in writing.
- (3) Insofar as we fail to deliver within the agreed timeframe, we are obliged to pay the customer 0.5% of the delivery value of the delayed item for each full week of the delay to a maximum of 5% of the delivery value. This shall not affect the right to proof of lesser damages. If the customer withdraws from the agreement because of a delay in delivery, as he is entitled to do under the provisions of § 323 of the German Civil Code (BGB), he may claim compensation for default or for costs incurred only if our failure to deliver on time can be shown to have been culpable or caused by gross negligence. The customer may claim compensation for default or for costs incurred only if our failure to deliver on time can be shown to have been culpable or caused by gross negligence, even if the relevant contract is a fixed-term agreement as defined by § 376 of the German Commercial Code (HGB). The same applies if, as a result of the delay in delivery, the customer has no further interest in taking delivery.  
Said restrictions shall not apply in the event of liability arising from injury to life, limb, or health.

## **6. Transfer of risk / Acceptance**

- (1) Despatch is at the customer's expense and risk unless otherwise agreed in writing. The risk of accidental loss or accidental damage passes to the customer from the moment the delivery leaves the factory or warehouse, unless otherwise agreed in writing.
- (2) If despatch is delayed at the request of the customer or if the customer refuses to accept delivery of the goods for reasons that cannot be attributed to us, the risk nonetheless passes to the customer from the moment he is informed of our willingness to supply. Costs arising from storage

(minimum of 0.5% of invoiced value per month) are to be borne by the customer. This shall not affect the customer's right to proof of lesser damages.

- (3) Unloading of goods is the responsibility of the customer and any costs are to be borne by him.

## **7. Warranty for new and used items**

- (1) Any claim by a customer under warranty presupposes that within a three-day period commencing with the discovery of the defect and/or with the point in time from which, given normal use, the customer could have discovered the defect, he has fulfilled his obligation to give notification of defects under § 377 of the German Commercial Code (HGB), providing that the commercial transaction is governed by § 343 of the German Commercial Code (HGB).
- (2) In the event of a proven defect, the customer's sole initial entitlement shall be to require that the fault be rectified. In this case, we are obliged to bear the cost of all necessary measures as laid down in § 439 of the German Civil Code (BGB). In the case of spare parts, the customer is entitled to demand a replacement delivery.
- (3) If we are not prepared or not in a position to rectify the defect or to replace the faulty goods and, in particular, if rectification or replacement by ourselves takes an unreasonable length of time, or if we refuse to rectify or replace, or if the process of rectification or replacement is unsuccessful for any reason, then the customer is entitled under § 323 of the German Civil Code (BGB) to withdraw from the agreement or to make reduced payment in line with § 441 of the German Civil Code (BGB).
- (4) Insofar as the customer is an entrepreneur as defined by § 310 of the German Civil Code (BGB), the item which forms the basis of the complaint may be sent back to us carriage paid.
- (5) Warranty and liability for the supply of used goods are excluded unless the deficiency of the item was apparent to us.
- (6) The period of warranty for new items is 12 months from the date of delivery. The period of warranty for refurbished components is 6 months from the date of delivery.

## **8. Liability**

- (1) We shall be liable solely and exclusively for culpable or grossly negligent misconduct on the part of employees and vicarious agents in the course of fulfilling the contractual services. In the case of simple negligence, we shall only be liable for damages
- arising from injury to life, limb, or health, and/or
  - arising from the breach of essential contractual duties (cardinal duties), in which cases, however, the liability of the contractor shall be limited to compensation for foreseeable damages which might typically occur.
- (2) The limitation of liability arising from this section shall not apply in cases where we have withheld or concealed a defect or assumed a guarantee for the quality of the services, besides claims in terms of the Product Liability Act.

## **9. Sale of consumer goods**

- (1) Insofar as the agreement concerns the sale of consumer goods as defined by § 474 of the German Civil Code (BGB), the customer's warranty claims are governed by the special legal provisions of §§ 474 to 479 of the German Civil Code (BGB).
- (2) The customer's rights under warranty within the framework of the sale of consumer goods will expire two years after the delivery of a new item and one year after the delivery of a used item.

## **10. Retention of title**

- (1) Goods delivered shall remain our property until the settlement of all payments due from the customer at the time when the agreement was signed.

- (2) The customer shall be revocably entitled to resell the supplied conditional commodities within the course of his customary business dealings. The customer however assigns to us, by way of security, any claims existing against his own customers to the value of the invoiceable amount of the conditional commodities delivered by us. The customer is entitled to recover such assigned claims and subsidiary rights provided that he is not in arrears of payment to us. In the event that we revoke the client's entitlement to recover assigned claims and subsidiary rights, the customer will be obliged to inform us of his customers and the amount of any existing claims against them and subsidiary rights owing to us as well as any other material facts.
- (3) The customer is obliged to insure all supplied conditional commodities against burglary and theft, fire and water damage, etc. to their new value. In the event of an insurance claim under Section 1 of these GTCs, the customer is obliged to assign to us any claim that he may have against his insurer for compensation.
- (4) The customer may not by way of security attach or pledge any conditional commodities to any third party. The customer is obliged to inform us immediately in writing of said attachment or any other action detrimental to our ownership as well as the costs arising from redemption.
- (5) In the event that the customer combines or mixes conditional commodities with other items, the customer cedes to us co-ownership of the new item proportionate to the ratio of the invoiceable amount of our conditional commodities to the invoiceable amount of the other combined or mixed goods at the time such combination or mixing took place. If our conditional commodities are combined with other movable objects by the customer in such a way that these constitute a uniform item or are inextricably combined in such a way that the new item is regarded as the principal item, the customer assigns to us proportionate co-ownership of the principal item insofar as it is his property. In any such case, the customer is obliged to safeguard the item on our behalf and at no cost to ourselves. All other provisions of this section of these GTCs apply to the item that arises from the process of combination or mixing.
- (6) Any processing of conditional commodities will always take place on our behalf. If the conditional commodities are reprocessed together with other items, we will assume co-ownership of the reprocessed item proportionate to the ratio of the invoiceable amount of our conditional commodities to the invoiceable amount of the reprocessed item.
- (7) Insofar as the customer falls into arrears, we will be entitled to withdraw from the agreement and reclaim the conditional commodities. In the event that the conditional commodities are sold or auctioned, we are entitled to deduct 10% of the proceeds of sale representing the costs that we have incurred in connection with the sale or auction, unless the customer can demonstrate to us that such costs are significantly lower. We are obliged to pass on to the customer the proceeds from any such sale or auction only to the extent that our own claims against the customer have been met.
- (8) If the value of the securities held by us exceeds the debt of the customer by more than 20%, we are required to surrender securities of our choice to a corresponding value upon request by the customer.

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

- (1) Insofar as the customer is a commercial operator, the sole place of jurisdiction for all disputes arising from contracts subject to these General Terms and Conditions of Sale and Supply shall be Krefeld. We reserve the right, however, to bring a civil action against the customer at the court of jurisdiction for his residence or place of business.
- (2) Place of performance for all obligations arising from this agreement shall be Krefeld unless otherwise explicitly stated in the individual agreement.
- (3) In deviation from the rule stated in Section 1 of these GTCs, Krefeld shall also be the place of jurisdiction in the event that the party against whom a claim is made shall move his residence or place of business from the ambit of this law or that his residence or place of business cannot be ascertained at the time the legal action was instigated. The same will also apply if the customer has not designated a place of jurisdiction in Germany according to §§ 12 ff. of the Code of Civil Procedure (ZPO).