



## **General Terms and Conditions of Heinrichs GmbH & Co. KG**

### **Scope**

1. These sales conditions apply to enterprises, legal persons under public law, and special funds under public law. Our deliveries and services are provided exclusively on the basis of the following conditions.

Terms and conditions of the partner, which are not explicitly recognized by us, shall be deemed null and void.

### **General provisions**

2. The contractual partners shall confirm any oral agreements immediately in writing or by remote data transmission. The business language internally and externally shall be German.

3. Orders become binding only if we supply an order confirmation. Delivery requests can also be made via remote data transmission.

Any rights and obligations of the partner arising from the contract concluded with us can only be transferred and assigned with our written consent.

4. The information and illustrations contained in brochures and catalogues are industry-standard approximations, unless they have been expressly designated by us as binding.

### **Long-term and request agreements, price adjustment**

5. Unlimited contracts can be terminated with a notice period of 3 months.

6. In the case of long-term contracts (contracts with a term of more than 12 months and limited term contracts) where there is a significant change in labour, material or energy costs, each party to the contract is entitled to demand an appropriate adjustment of the price taking these factors into account.

7. If a binding order quantity has not been agreed, we shall base our calculation on the non-binding order quantity (target quantity) expected by the partner for a certain period of time.

If the partner takes less than the target quantity, we are entitled to increase the unit price accordingly. If he takes more than the target quantity, we can lower the unit price accordingly, as long as the partner has announced the additional requirements at least 6 months prior to the delivery.

8. For delivery contracts on request, unless otherwise agreed, binding quantities must be communicated to us by request at least 6 months prior to the delivery date.

Additional costs incurred as a result of a delayed request or subsequent changes in the request with regard to time or quantity at the behest of our partner shall be borne at the expense of the latter; our calculation is decisive in this case.

### **Confidentiality**

9. Each contracting party shall use all documents (including samples, models and data) and knowledge that it obtains from the business relationship only for the jointly pursued purposes and with the same care as their own documents and knowledge with respect to third parties, wherever the other contracting party designates it as confidential or has an apparent interest in maintaining its secrecy.

This obligation starts with the first receipt of the documents or knowledge and ends 36 months after the end of the business relationship.

10. The obligation does not apply to documents and knowledge which are generally known or which were already known to the contracting party when they were received, without that party having been obliged to maintain secrecy, or which had subsequently been transmitted by a third party authorised to transfer them, or the documents or knowledge of the other contracting party to be kept secret were developed by the receiving contracting party without exploitation.

### **Drawings and descriptions**

11. If one contracting party makes drawings or technical documents available to the other about the goods to be delivered or their manufacture, these shall remain the property of the providing contracting party.

### **Samples and production tools**

12. Unless otherwise agreed, the production costs for samples and production equipment (tools, moulds, templates, etc.) shall be invoiced separately according to the goods to be delivered. This also applies to production equipment that need to be replaced as a result of wear.

13. The costs for maintenance and proper storage as well as the risks of damage or destruction of the production equipment shall be borne by us.

14. If the partner discontinues or terminates the cooperation during the production period for the samples or production equipment, all manufacturing costs incurred to that date shall be borne by it.

15. The production equipment shall remain in our possession at least until the delivery contract is fulfilled, even if the partner has paid for them. Thereafter, the partner shall be entitled to reclaim any production equipment if a mutually agreed arrangement has been reached about the time of release and the partner has fully fulfilled its contractual obligations.

16. We shall store the production equipment free of charge for a period of 3 years after the last delivery to our partner. Afterwards, we shall ask our partner in writing to comment within 6 weeks about its further use. Our obligation to safekeeping shall end if no statement is made within these 6 weeks or no new order is placed.

17. Customer-related production equipment may only be used by us for deliveries to third parties with the prior written consent of our partner.

#### **Obligations of the customer**

18. If the goods have been produced according to drawings, models, designs, labels, trademarks or other specifications of the partner, the partner shall indemnify us from any liability for infringement of industrial property rights or copyrights, which we might be exposed to because the goods do not meet specifications. The indemnification relates to all expenses that we necessarily accrue from or in connection with any claim by a third party.

19. For deliveries within EU member states, the partner must inform us of its VAT identification number before delivery. Otherwise, in addition to the agreed purchase price, it will have to pay for our deliveries with the VAT amount legally owed by us.

20. If a partner who is domiciled outside of the Federal Republic of Germany (non-domestic customer) or its agent collects goods from us and transports or dispatches them to a non-domestic territory, the partner must provide us with the export certificate required for tax purposes. If this certificate is not provided, the partner will have to pay us the VAT applicable for delivery within the Federal Republic of Germany from the invoice amount.

#### **Prices**

21 Our prices are in euros and are exclusive of VAT, packaging, freight, postage and insurance.

#### **Payment conditions**

22. All invoices are due within 30 days of the invoicing date; if you pay within 10 days after receipt of invoice, we shall grant a 2% early payment discount. Tool and device costs are payable immediately, and no early payment discount can be granted.

23. If it is beyond dispute that some of the goods we delivered were faulty, our partner will nevertheless be obliged to pay for the faultless portion, unless the partial delivery is of no interest to it. Incidentally, the partner can only set off legally established or undisputed counterclaims.

24. If the target is exceeded, we are entitled to charge default interest to the amount that the bank charges us for overdraft facilities, and at least 8 percentage points above the respective base interest lending rate of the European Central Bank.

25. In case of default of payment, we may cease to fulfil our obligations until payments are received, after written notification to the partner.

26. Bills of exchange or cheques are only accepted after agreement and only on account of payment and on the condition that they are discountable. Discount charges shall be charged from the date that the invoice amount is due. A guarantee for a timely submission of a bill of exchange or cheque and for raising a protest to a bill is excluded.

27. If, after the conclusion of the contract, it becomes apparent that our claim for payment will be jeopardized by the partner's inability to perform its obligations, we can refuse the service and set a reasonable deadline for the partner within which it must pay promptly for delivery or provide a security. In case of refusal of the partner or the deadline being surpassed, we shall be entitled to withdraw from the contract and assert claims for damages.

### **Delivery**

28. Unless otherwise agreed, our delivery conditions are ""ex works"". Decisive for compliance with the delivery date or the delivery period is a notification of readiness for dispatch or collection by us.

29. The delivery period shall begin with the dispatch of our order confirmation and the clarification of any technical issues; it shall be extended appropriately if the preconditions set out in para. 59 prevail.

30. Partial deliveries are permitted to a reasonable extent. They will be listed separately in the invoice.

### **Shipping and transfer of risk**

31. Goods notified as ready for dispatch must be accepted by the partner without delay. Otherwise we shall be entitled to ship them at our own discretion or store them at the partner's own expense and risk.

32. Unless otherwise agreed, the means of transport and the transport route shall be at our discretion.

33. Upon handing over to the railway, the forwarding agent or the carrier, or upon the onset of storage, at the latest however upon leaving the plant or warehouse, the risk shall be transferred to the partner, even if we perform the delivery ourselves.

### **Delay in delivery**

34. If we can foresee that the goods can not be delivered within the delivery period, we shall inform the partner without delay, inform it of the reasons for this and, if possible, provide an expected delivery time.

35. Compliance with the agreed delivery time requires the timely receipt of all documents, necessary permits, approvals and especially plans to be supplied by the partner, as well as compliance with the terms of payment. If such preconditions are not fulfilled by the partner in due time, the above-mentioned deadline shall be extended accordingly. The stated deadline shall also be extended appropriately even if delivery is delayed by a circumstance listed in para. 59.

If we are in default of delivery and as a result our partner can assert claims for damages, our liability for damages in case of simple negligence shall be limited to 10% of the purchase price. Any further claims by our partner shall remain unaffected.

36. The partner is only entitled to withdraw from the contract if we are responsible for not complying with the delivery date and it has set us a reasonable grace period without fulfilment.

### **Retention of title (ownership)**

37. We reserve the ownership of the delivered goods until all requirements arising from the business relationship with the partner are fulfilled.

38. The partner is entitled to sell these goods during the ordinary course of business as long as it fulfils its obligations arising from the business relationship with us in good time. However, the partner may neither pledge nor surrender the reserved goods as security. The partner is obliged to safeguard our rights in the case of any credited resale of the reserved goods.

39. In the event of any breach of contractual obligations by the partner, in particular default of payment, we shall be entitled to withdraw from the contract and take back our goods after any reasonable deadlines for fulfilment set for the partner have expired; the legal provisions on the dispensability of setting a deadline remain unaffected. The partner is then obliged to surrender the goods.

We are entitled to rescind the contract if any application for opening of insolvency proceedings is filed against the assets of the partner. 40. All claims and rights arising from the sale or any leasing of goods to which we are entitled to property rights shall be assigned to us by the partner as security. We hereby accept such an assignment.

41. Any processing of the reserved goods shall always be undertaken by the partner on our behalf. If the reserved goods are processed or inseparably mixed with other objects that do not belong to us, we shall acquire co-ownership of the new object in proportion of the invoice value of the reserved goods in relation to the other processed or mixed objects at the time of processing or mixing.

If our goods are combined with other mobile objects into a single item or are inseparably mixed with them, then if the other material is to be regarded as the main material, the partner shall assign proportional co-ownership to the extent that the proportion of the main material allows. The partner shall hold the property or co-ownership on our behalf. The same applies to the material resulting from processing or combination or mixing as is does for the reserved goods.

42. The partner must inform us immediately about the execution of third party enforcement measures relating to reserved goods assigned to us or goods identified as security, handing over the documents we need to make an intervention. This also applies to impairments of any kind.

43. If the value of the existing securities exceeds the secured claims by more than 20%, we shall be obliged to release securities of our choice at the request of the partner.

### **Defects**

44. The condition of the goods is oriented exclusively towards the agreed technical delivery instructions. If we must deliver in a manner compliant with drawings, specifications, samples etc. provided by our partner, the partner shall assume the risk for the suitability of the goods for their intended use. The time-point of the transfer of risk according to para. 33 is decisive for the contractual condition.

45. Claims for defects shall only be accepted by us if it can be determined without fault that this was our delivery and that our partner has duly fulfilled its duties to inspect and notify pursuant to Section 377 of the German Commercial Code (HGB).

If acceptance of the goods or an initial sample inspection has been agreed upon, any complaint of defects which the partner should have ascertained upon careful acceptance or initial sample inspection shall be rejected.

46. We must be provided the opportunity to ascertain the defect complained about. Complained about goods must be returned to us immediately upon request. We shall assume the transport costs, which shall be agreed with us in advance, if the complaint is justified. If the partner does not comply with these obligations or makes changes to the goods that have already been complained about without our consent, it shall lose all claims for any material defects.

47. For material defects caused by inappropriate or improper use, faulty installation or commissioning by the partner or third parties, normal wear and tear, faulty or negligent treatment, we can vouch

no more than we can for the consequences of improper or on our part non-consented changes or repairs made by the partner or third parties. The same applies to defects that reduce the value or suitability of the goods only insignificantly.

48. For the case of defective parts, we shall be entitled to subsequently fulfil our obligations whether it be by repairing the complained about goods or providing a faultless replacement at our own discretion. If we decide to remedy the defect, we shall bear the costs necessary for remedying the defect, but only to the extent that they do not increase as a result of the goods being moved to a place other than the place of fulfilment after the risk is transferred, unless the move constitutes a part of the intended use of the delivered item.

Our partner can only demand repair or replacement if the defective parts fall below the minimum quantity limit specified in DIN EN 10254.

49. If any reworking proves unsuccessful or if we refuse any reworking altogether, our partner may - regardless of any further claims - either reduce the purchase price or withdraw from the contract at its own discretion. If, after due consideration, we decide to rework by repairing the goods in question, the rework shall not be deemed to have failed until a second unsuccessful attempt.

50. If changes and/or rework were implemented with our written consent by our partner in the case of defective parts, a reimbursement of the partner's costs by us shall require a special written agreement.

51. If our partner is entitled to demand a reworking due to a material defect, withdraw from the contract, or indeed reduce the purchase price, its claim will be limited to a period of 12 months from the time of risk transfer.

52. The right of the partner for legal recourse against us shall only exist to the extent that the partner does not make any agreements with its customer that extend beyond statutory warranty claims. As regards the extent of this recourse, the restriction also applies that we would not have to bear any increased costs resulting from the fact that after our delivery the goods are shipped to any place other than the place of fulfilment, unless this move constitutes part of the intended use of the delivered item.

### **Other claims, liability**

53. Unless otherwise stated below, any other and ongoing claims of the partner against us shall be excluded. This applies in particular to claims for damages due to any breaches of obligations from the contractual relationship or from impermissible use. We are therefore not liable for any damages that did not arise from the delivered goods themselves. Importantly, we are not liable for any lost profits or other financial losses of the partner.

54. The above limitations of liability shall not apply in the case of intent, gross negligence on the part of our legal representatives or executives, or culpable violation of essential contractual obligations. In the event of a culpable breach of important contractual obligations, we shall only be liable for contractually typical, reasonably foreseeable damage, except in cases of intent or gross negligence on the part of our legal representatives, management staff or executives.

55. Furthermore, the limitation of liability shall not apply in those cases where, according to the Product Liability Act, any personal injury or property damage is alleged due to private use of objects where the delivered goods are defective. It also does not apply in the event of injury to life, limb or

health and in the absence of quality statements, if and insofar as the quality statements were intended to protect the partner against damage arising from the delivered goods themselves.

56. Insofar as our liability is excluded or limited, this also applies to the personal liability of our employees, staff, legal representatives and vicarious agents.

57. The statutory provisions regarding the burden of proof remain unaffected.

58. Any guarantee given by us for a certain property of the delivery item shall grant the partner the rights and claims laid down in detail in the respective guarantee statement, independently of our liability for defects.

### **Force majeure**

59. Circumstances of force majeure, labour disputes, riots, official measures, the absence of supplies from our suppliers and other unforeseeable, unavoidable and serious events shall release any contracting party from their obligation to perform for the duration of the disruption and to the extent of its effect. This also applies even if these events occur at a time when the affected contracting party is in default, unless that party caused the default intentionally or through gross negligence. The contractual partners are obliged to provide the necessary information as soon as is reasonably practicable and to adapt their obligations to the changed circumstances in good faith.

### **Data processing**

60. According to Sections 26 and 34 of the German Data Protection Act (BDSG), we hereby indicate that we store data of the partner, as far as is necessary for business purposes and within the law, by ourselves or with third parties.

### **Place of Fulfilment, Jurisdiction and Applicable Law**

61. Unless otherwise stated in the order confirmation, our place of business is the place of fulfilment.

62. For all legal disputes, also regarding the processing of bills of exchange or cheques, our place of business is the place of jurisdiction. We are also entitled to file suit at the partner's seat of jurisdiction.

63. Only the law of the Federal Republic of Germany shall be applied within the contractual relationship.

Any application of the United Nations Convention of 11 April 1980 on Contracts for the Sale of Goods (CISG - ""Vienna Sales Convention"" ) shall be excluded.

Current as of: December 2008