

1. Scope of Application

1. All of our sales, deliveries and performances (hereinafter uniformly referred to as: "Deliveries") shall be subject to the following terms. These terms apply vis-à-vis entrepreneurs, legal entities of public law and public law special funds (Buyer). By accepting these terms without raising any objection, the Buyer is declaring its agreement to their exclusive application for the respective delivery and all subsequent business transactions. We do not recognize any terms of the Buyer which oppose or deviate from our terms unless we expressly agreed to the application of such terms in writing. Our terms apply even if, despite having knowledge of terms of the Buyer which oppose or deviate from our terms, we effect delivery to the Buyer without reservation.

2. We reserve the right to modify our standard terms of sale from time to time. The Buyer declares its agreement to the exclusive application of the modified conditions if it does not object to their application within a week of receiving them and if we specifically informed the Buyer of the significance of such behavior upon notifying it of the modified conditions.

2. Offer, Samples, Warranties, Contractual Conclusion

1. Our offers are subject to change in respect of price, volume, delivery period and delivery possibilities. Offers can only be accepted within a period of 30 days.

2. The information and data contained in data sheets, brochures and other advertising and information material only serve as a guideline and only become a binding part of the contract if we have expressly agreed to them in writing.

3. The qualities of patterns and samples are only binding if this was expressly agreed.

4. Stipulations concerning the composition and imperishable nature of the goods are only deemed warranties if they are expressly referred to as such. The same applies to the assumption of any procurement risk.

5. The agreement is only binding for us once we have issued a written confirmation of order. Oral agreements require written confirmation by us.

3. Prices, Payment, Delay, Termination upon application for insolvency

1. The prices are without VAT, external packaging and dispatch costs (Ex Works).

2. All prices relate to the cost factors at the time of conclusion of the contract respectively the giving of confirmation of order. If, subsequently, there is a substantial increase in the cost of raw materials, energy, freight or packaging material for us or our supplier, and if these lead to a considerable increase in our purchase prices or total production costs, we are entitled to demand that the Buyer immediately enter into negotiations regarding a price adjustment, unless the price was expressly confirmed as a fixed price. If no agreement is reached within a reasonable period, we are released from our delivery duty in respect of any outstanding deliveries.

3. Our invoices are to be paid within the agreed payment period, but at the latest 30 days from the invoice date. Decisive for determining adherence to payment deadlines is the receipt of the payment into our accounts. Cheques are only taken in payment pending full discharge of the debt. Any expenditure incurred is borne by the Buyer.

4. In the event of a delay in payment, interest shall become due at a rate of 8 percent points p.a. above the basic interest rate (sec. 247 BGB). The right to provide evidence of more extensive default damage is reserved.

5. We are not obliged to fulfill the agreement for as long as the Buyer fails to comply with its duties arising from other agreements with us, in particular has not paid due invoices.

6. The Buyer can only set off against, or retain payment on account of, such claims as have been acknowledged in writing or determined with unappealable effect.

7. We are entitled only to effect outstanding deliveries against advance payment or make them dependent upon the provision of a security if the Buyer is in delay with agreed payment dates, even after expiry of a reasonable period of grace, or the surrounding circumstances are such that, applying standards usual in the banking trade, there are doubts concerning the Buyer's ability to pay. In these cases we are entitled, to fix a due date for all claims in the business relationship with the Buyer with immediate effect.

8. This purchase contract will end automatically if an application is made for the commencement of insolvency proceedings over the Purchaser's assets and if the competent insolvency court thereupon orders security measures pursuant to sections 21, 22 of the German Insolvency Act (Insolvenzordnung - InsO).

4. Delivery and Delivery Times, Packaging, Transfer of Risk

1. Our written confirmation of order is decisive for the type and scope of the delivery. We are entitled to make delivery by installments insofar as this is reasonable for the Buyer.

2. Delivery times are only approximate times if they are not expressly defined as binding in writing. The delivery time shall begin with the sending of our confirmation of order, but shall not begin before all questions relevant for the execution of the agreement, involving actions to be carried out by the Buyer, have been finally clarified. In particular, the delivery time shall not begin before we have received all information required for the delivery from the Buyer or its representative, or before the Buyer proves that, insofar as necessary, it has opened a letter of credit or rendered an advance payment or security.

3. The delivery time is considered to be met if the object to be delivered has left our works, or we have notified our readiness to deliver, before expiry of the deadline.

4. All cases of force majeure, strikes, blockage, insufficient supplies of materials, raw materials or energy, a lack of transport possibilities or other similar events or causes outside the scope of our influence shall release us from our obligations to fulfill this agreement for the duration and scope of such hindrances. This also applies if such circumstances arise among our suppliers. The above mentioned circumstances shall not be our responsibility even if they arise when we are already in delay with delivery. We shall inform the Buyer of the beginning and end of such hindrances as soon as possible in writing.

5. If it has been agreed that the delivery of a total amount is to be effected in accordance with several call-forward requests, the Buyer is to distribute the individual deliveries evenly over the calendar year. If more than 10% of the annual delivery is to be called forward in one calendar month, this requires our prior written consent.

6. We determine the type of packaging and dispatch.

7. Risk passes to the Buyer at the latest upon the object of delivery being dispatched, even if we have assumed responsibility for additional services such as loading, transport or unloading. If delivery is delayed as a result of circumstances which are the Buyer's responsibility, the price risk passes to the Buyer on the day on which it is notified of our readiness to deliver. At the request of the Buyer we will insure the respective delivery against theft, breakage, transport, fire and water damage at the Buyer's expense.

8. The Buyer is to assert complaints about transport delays, deficiency notifications or transport damage against our forwarder and freight driver, and to notify us of this fact without delay.

9. We are not obliged to supply third parties at the request of the Buyer.

5. Claims for defective goods, Duties of the Buyer in the event of a Defect Notification by its Customers, Compensation of Damages, Liability

1. Claims of the Buyer for defective goods depend on it properly complying with its statutory duties of examination and notification. In the event of an obvious defectiveness or incompleteness of the goods, we are to be notified thereof in writing within two weeks of the delivery arriving at its destination, including a precise description of the defect and the order or invoice number. At our request the documents, samples and/or the defective goods included in the delivery are to be returned to us. Claims of the Buyer on account of a defectiveness or incompleteness of the delivery are excluded if it fails to comply with this obligation.

2. Should the goods be defective, we can elect to remove the defects or to provide a defect-free replacement. Only if this repeatedly fails or is unreasonable and the defect is not only insubstantial is the Buyer entitled to rescission or reduction of the purchase price in accordance with statutory provisions. Sec. 478 BGB remains unaffected. The Buyer is entitled to damages claims in accordance with clause V.6.

In respect of any replacement deliveries and rectification work, a warranty period of 3 months is granted from the time of delivery or rectification which, however, runs at least until the expiry of the warranty period for our original performance (cf. clause V.9).

3. The Buyer is to inform us without delay of any defect notification of its customers in respect of our objects of delivery. If the Buyer does not comply with this obligation, it shall have no claims against us due to defective deliveries, and no claims to compensation in accordance with sec. 478 BGB. Furthermore, the Buyer is to secure evidence in a suitable form and, at our request, give us the opportunity to examine this evidence.

4. Any advertising statements of the Buyer vis-à-vis its customers or in its advertising materials which have not been authorized by us in advance will not establish defect claims against us.

5. There are no defect claims if deviations from the agreed composition/specifications are only insubstantial and/or if the impairment to use is merely insubstantial. We are not liable for the product being suitable for Buyer's intended use, except the intended use is agreed in writing.

6. We are liable without restriction under the Product Liability Act in the event of an express assumption of a warranty or a procurement risk, or in the event of willful or grossly negligent violations of a duty. We are also liable without restriction in the event of willful or negligent injury to life, physical well-being or health. We will only be liable for property damage or financial loss caused by slight negligence if obligations have been violated

whose fulfillment is a pre-condition for the due execution of the contract and on whose fulfillment the Purchaser may in particular rely ("main contractual duties"); the liability will, however, be restricted to damage or loss which is foreseeable upon conclusion of the contract and typical of this type of contract

7. Claims to compensation for all kinds of damage arising from improper treatment, modifications, assembly and/or operation of the delivery object, or from incorrect advice or instructions of the Buyer, are excluded unless we are responsible for such damage. In addition, the Buyer bears the full responsibility for the use of any design, trademark or trading name appearing on the goods at its request.

8. If the Buyer is entitled to demand damages instead of performance or to withdraw from the agreement, at our request it must declare within a reasonable period whether and if so how it intends to exercise such rights. If it does not make such declaration in due time or if it requests performance, it is only entitled to exercise these rights after the fruitless expiry of a further period of grace.

9. Defect claims shall become time-barred after 12 months from the transfer of risk. The same applies to legal defects. In the event of willful breaches of a duty, claims arising from tortious acts, the absence of a warranted quality, the assumption of procurement risks or personal injury, the statutory time periods apply. If the performance is provided for a construction and it has caused its defectiveness, the warranty period amounts to 5 years. Secs. 438 para. 3, 479 and 634 a para. 3 BGB remain unaffected.

10. If the Buyer suffers damage on account of a delay for which we are responsible, for each full week of the delay it can demand 0.5%, but in total a maximum of 5% of the invoice price for that part of the performance which cannot be used in due time or in accordance with contractual specifications on account of the delay.

11. A further-reaching liability for damages than that provided in the paragraphs of this clause V. is excluded - without regard to the legal nature of the asserted claim.

12. The aforementioned restrictions of liability also apply, in terms of the reason and amount, in favor of our statutory representatives, employees and other vicarious agents.

6. Reservation of title

1. We reserve title to all goods delivered until the Buyer has completely fulfilled all present and future obligations arising from its business relations with us. This applies even if payments have been made against specifically designated claims. In the event of a current account, the reserved goods shall be deemed security for the claim to the account balance.

2. Any conversion or processing of the reserved goods shall be effected for us as manufacturer within the meaning of sec. 950 BGB, without subjecting us to any obligation. The converted/processed goods shall be deemed reserved goods within the meaning of these terms. If the reserved goods are processed or inseparably mixed/combined with objects which do not belong to us, we shall acquire joint title to the new object in the proportion of the invoice value of the reserved goods to the invoice value of the other objects used at the time of processing or mixing/combining. If the reserved goods are combined or inseparably mixed with other goods which do not belong to us to form a uniform object, and if this object is to be regarded as the principal object, the Buyer herewith transfers co-ownership of this principal object to us on a pro rata basis, insofar as it owns this principal object. The Buyer keeps safe custody of the owner's title for us together with its own title without charge.

3. Until our revocation, which is admissible at any time and without any particular reason, the Buyer is entitled to sell, process or recast the reserved goods within the ordinary course of business. A sale within this meaning shall also include an installation in the ground or earth or in machines connected with buildings, or a use in fulfillment of other contractual agreements. In the event of such sale the Buyer herewith assigns to us its resulting claims against the customer to payment of the purchase price. If the reserved goods are sold by the Buyer together with other objects not supplied by us, this assignment shall only apply up to the value of the reserved goods sold as specified in our invoice. In respect of the sale of objects to which we have a co-ownership share in accordance with clause VI.2, the assignment shall apply in the amount of this co-ownership share. The assigned claims serve as security to the same extent as the reserved goods. If the assigned claim is included in a current account, the Buyer already now assigns to us a balance from the current account corresponding to the amount of this claim. Until our revocation, which is admissible at any time and without any particular reason, the Buyer is entitled to collect the claims assigned to us. At our request it is obliged to notify its customers of the advance assignment and to provide us with the information and documents necessary to assert the claim.

4. If the value of the securities provided for us exceeds the total value of our claims by more than 10%, at the request of the Buyer we shall release corresponding securities of our choice.

5. The Buyer is not entitled to make any other disposals of the reserved goods (pledges, transfers for security purposes) or any other assignments of the claims mentioned in clause VI.3. In the event of a levy of execution or seizure attachment concerning the reserved goods, the Buyer is obliged to make our ownership known and inform us without delay.

6. The Buyer is obliged to insure the reserved goods appropriately against all usual risks, in particular fire, burglary and water damage, at its own expense, to treat them carefully and store them properly.

7. If the Buyer is fully or partially in default with payment of at least two purchase rates, we are entitled to take back the reserved goods after having set a period of grace expiring without result. This also applies in case we have not withdrawn from the agreement.

7. Performance by Affiliated Enterprises

Upon our demand any of our contractual obligations can also be fulfilled by HCS Group GmbH and Haltermann Besitzgesellschaft GmbH. Due regard is to be paid to the Buyer's legitimate interests. If the performance is of equivalent value, the relevant contractual obligations are deemed fulfilled.

8. Observance of Safety and other Provisions

1. Unless anything to the contrary is agreed in the individual case, the Buyer is responsible for observing statutory and official provisions, as well as accepted practices concerning import, transport, storage, treatment, use and disposal of the goods.

2. Furthermore, the Buyer is obliged

- to familiarize itself with all product information provided by us, including MSDS.
- to provide its employees, contractors, agents and customers with sufficient instructions to work with the product,
- to take suitable measures for preventing damaging environmental effects and other risks for persons or assets by our goods.

3. If the Buyer violates the duties set forth in clause VIII. 1 and 2 in a way which is not insubstantial, we are entitled to withdraw from the agreement after giving prior warning.

4. The Buyer shall be liable to us for all damage incurred as a result of its failure to observe the safety provisions and shall indemnify us against claims of third parties.

9. Transfer of Rights, Trademark Use

1. A transfer of the Buyer's rights arising from this contractual relationship is only admissible with our prior written consent.

2. Within the scope of its advertising measures, the Buyer is only entitled to use the trademarks protected in our name with our prior consent, in accordance with our specifications, in the original form and for unaltered, original goods. Our consent can be revoked at any time. The Buyer shall bear the sole responsibility for the form of its advertisements.

10. Confidentiality, contractual penalty, data protection

1. The Purchaser shall keep strictly confidential the business and trade secrets, and in particular the prices agreed, disclosed to him within the scope of the contractual relationship. It shall only communicate them to third parties after having obtained our prior written consent. The Purchaser shall inform its employees about this obligation to maintain confidentiality. The Purchaser shall pay a contractual penalty in the amount of €10,000 if this clause X. is violated.

2. We are entitled to process, store or transmit the data obtained in connection with this contractual relationship in compliance with the legal provisions, to the extent necessary in order to fulfill the purpose of the contract or to protect our justified interests and to the extent that there is no reason to assume that this is prohibited due to a prevailing interest of the purchaser which needs protection.

3. In this context, we may transmit your personal data within our global group to affiliated companies as well as to domestic and foreign third parties providing services to us. It is possible that more lenient provisions apply to the protection of your personal data in some countries. We will make corresponding contractual arrangements with third parties which oblige such third parties to comply with the data protection requirements, where necessary.

11. Choice of Law, Legal Venue

1. The law of the Federal Republic of Germany applicable for the legal relations of domestic contractual partners shall apply without exception; the application of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 is excluded.

2. Hamburg is agreed as legal venue for all disputes arising out of this agreement in cases in which the Buyer is a merchant, a legal entity of public law, a public special fund or has no general legal venue in Germany. However, we are entitled to sue the Buyer at its place of general jurisdiction, as well.