

GENERAL TERMS AND CONDITIONS FOR ORDERS AND DELIVERIES

HAWA MAGNETISCHE UND LEITFÄHIGE WERKSTOFFE, HEINEWEG 7, D-41564 KAARST

1. General

- 1.1 These General Terms and Conditions for Orders and Deliveries (referred to below as the "General Terms and Conditions") apply to all contracts on the sale and/or delivery of movable objects (also referred to below as "products"), where the purchaser is a corporate entity or individual carrying on their trade or profession (entrepreneur) at the time of conclusion of the contract, or a corporate entity established under public law or a special fund under public law.
- 1.2 These General Terms and Conditions in their latest version shall also apply as a framework agreement to future contracts on the sale and/or delivery of movable objects with the same purchaser, without our being obliged to refer to them in each individual case.
- 1.3 These General Terms and Conditions shall apply exclusively. General terms and conditions of the purchaser shall only apply if and to the extent that we expressly acknowledge them in writing. In particular, silence on our part shall not constitute acceptance of or consent to such deviating terms and conditions, even in the case of future contracts. These General Terms and Conditions shall also apply in place of any general terms and conditions of the purchaser even if they state that acceptance of the order constitutes unconditional acceptance of the general terms and conditions. By accepting the acknowledgement of order, the purchaser expressly accepts that he is waiving his legal demurrer derived from the general terms and conditions.
- 1.4 To the extent that individual agreements have been made with the purchaser in individual cases, they shall have priority over these General Terms and Conditions. The contents of such agreements shall only be effective when stated in a written contract or confirmed by ourselves in writing.
- 1.5 Legally relevant statements and notifications which are to be made to us by the purchaser after conclusion of the contract (e.g. setting of deadlines, reports of defects or declarations of withdrawal or price reduction) shall only be effective if made in writing.

2. Quotations and orders

- 2.1 All statements on our products and services, and especially the illustrations, drawings, details of capacity and performance and other details contained in our quotations and publications are to be regarded as approximate average values.
- 2.2 The documents belonging to quotations, such as drawings, illustrations, technical data, references to standards and statements in advertising materials do not constitute statements of quality, warranties of characteristics or guarantees unless they are expressly designated in writing as such.
- 2.3 We expressly reserve all rights of ownership and copyright to catalogues, technical documentation (e.g. drawings, plans, statements of weights and dimensions, calculations and costings) and other product descriptions or documents, including those in electronic form. The purchaser undertakes not to make the documents listed in the previous sentence accessible to third parties unless we issue our express written consent in advance.
- 2.4 The communications to the purchaser designated as "quotations" are non-binding and are made without engagement. They constitute an invitation to the purchaser to place an order for goods or services.
- 2.5 The order for the products from the purchaser shall constitute a binding offer of a contract. Unless otherwise stated in the order, we shall be entitled to accept this offer of a contract within two weeks of receipt.
- 2.6 A contract shall only come into effect – even in the course of normal business – when we accept the purchaser's order. Acceptance may either be communicated in writing (e.g. in an acknowledgement of order) or constituted by the despatch of the products to the purchaser. The content of the contract shall be determined by our acknowledgement of order.

3. Prices, terms of payment and defence of insecurity

- 3.1 Unless otherwise agreed, all prices are stated in Euros, ex-works, including packaging and excluding freight, and net of the value added tax to be borne by the purchaser at the applicable statutory rate.
- 3.2 In the case of sale by despatch (clause 6.2), the purchaser shall bear the transport costs ex-warehouse and the costs of any transport insurance desired by the purchaser. Any customs duties, fees, taxes and other public charges shall be borne by the purchaser. We will not take back any transport packaging or any other packaging covered by the German Packaging Ordinance, which shall become the property of the purchaser, with the exception of europallets.
- 3.3 Works which are not part of the agreed scope of supply will result in an additional charge.
- 3.4 Should there be more than 4 months between the date of conclusion of the contract and the date of delivery, without this being caused by any delay in delivery within our control, and should our valid price structure have changed in that period, we shall be entitled to require the list price applicable on the day of delivery in place of the agreed purchase price. We will send a correspondingly amended acknowledgement of order to the purchaser before delivering. In such a case, the purchaser may withdraw from his order for the goods whose price has been increased. That withdrawal must be declared in writing no later than on the 4th working day after receipt of the amended acknowledgement of order. Delivery by fax is sufficient.
- 3.5 Should it become apparent after conclusion of the contract that our entitlement to the purchase price is at risk from inability of the purchaser to pay (e.g. as a result of an application to institute insolvency proceedings), we shall be entitled as provided for in law to refuse performance and – after setting a period of grace if necessary – to withdraw from the contract (Section 321 of the German Civil Code (BGB)). In the case of contracts for the production of non-fungible things (individual custom-made items), we may declare our withdrawal immediately; this shall not prejudice the statutory provisions on the dispensability of setting a period for performance.

4. Delivery periods and delays in delivery

- 4.1 All delivery dates stated are without engagement and shall be deemed to be only approximately agreed unless we have expressly stated them to be binding. In the case of delivery dates without engagement, delivery within 3 days of the stated delivery date shall still constitute delivery on time.
- 4.2 Should we be unable to meet an expressly agreed date for reasons within our control, or default on delivery for other reasons, the purchaser is to grant us a reasonable period of grace which shall start on receipt of his notification of that period. Should that period expire without performance, the purchaser shall be entitled to withdraw from the contract.

5. Delivery by suppliers and force majeure

- 5.1 To the extent that we cannot meet binding delivery dates for reasons beyond our control (non-availability of the goods), we will inform the purchaser of this without delay and at the same time notify him of the prospective new delivery period. If the goods are still not available within the new delivery period, we shall be entitled to withdraw from the contract in whole or in part; any consideration already paid by the purchaser will be refunded without delay.
- 5.2 We shall in particular be entitled to withdraw from the purchase contract if we are not correctly and punctually supplied by our suppliers for reasons beyond our control and in spite of having concluded a corresponding covering transaction.
- 5.3 In the case of force majeure, the provisions set out in clause 5.1 shall apply accordingly. Force majeure shall include war, civil disturbances, industrial disputes, strikes, official directives or actions, unavoidable shortages of energy or raw materials, transport bottlenecks beyond our control, unforeseeable disruptions to operation, for example due to fire, flood and damage to machinery, and all other hindrances which, when viewed objectively, have not been culpably brought about by ourselves.
- 5.4 If a delivery date or delivery period has been agreed as binding and if the agreed delivery date or delivery period is exceeded as a result of events as set out in clauses 5.1 to 5.3, the purchaser shall be entitled, after setting a reasonable period of grace which expires without performance, to withdraw from the as yet unfulfilled part of the contract if he cannot in an objective view be reasonably expected to continue to adhere to it. In such a case, further claims by the purchaser, including in particular claims for damages, shall be excluded.

6. Delivery, transfer of risk and default in acceptance

- 6.1 Unless otherwise agreed, delivery shall be made from the Dormagen warehouse ("ex-works" as defined in Incoterms® 2010), which shall also be the place of performance.
- 6.2 On request by and at the cost of the purchaser, the products will be consigned to a different destination (sale by despatch). Unless otherwise agreed, we shall be entitled to determine the method of consignment (and in particular the carrier, transport route and packaging) ourselves.

- 6.3 The risks of accidental destruction and accidental deterioration of the products shall be transferred to the purchaser on handover at the latest. In the case of sale by despatch, however, the risks of accidental destruction and accidental deterioration of the products and the risk of delay shall be transferred no later than on handover of the products to the forwarding agent, carrier or other person or organization appointed to effect the shipment. Should the purchaser be in default of acceptance, this shall be equivalent to handover.
- 6.4 Should the acceptance of the products or their despatch be delayed for reasons within the purchaser's control, we shall be entitled at our own option, after setting a 14-day period of grace, to require immediate payment of the purchase price or to withdraw from the contract or to refuse performance and require damages in lieu of performance in its entirety.
- 6.5 Unless otherwise expressly agreed in writing, we shall be entitled to make partial deliveries to an extent which the purchaser can be reasonably expected to accept, and these partial deliveries will be invoiced individually.

7. Terms of payment

- 7.1 Our invoices are payable in full within 14 days of the invoice date. All bank charges are to be borne by the purchaser.
- 7.2 Even if no reminder is issued, the purchaser shall be deemed in default with payment if he fails to pay within 7 days of the invoice or other equivalent statement becoming due.
- 7.3 Should the purchaser be in default with a payment, all his payment obligations resulting from the business relationship with us – including those for which bills of exchange have been issued – will become due immediately. In such a case, we shall be entitled to charge interest in the amount stipulated by law from the relevant time onwards. The seller reserves the right to pursue claims for greater damages.
- 7.4 Bills of exchange will only be accepted on account of performance, after prior agreement and when they are discountable without granting any reduction in the purchase price. Payments by the cheque and bill method will also only be accepted on account of performance. The entitlement to the purchase price will only expire when the bill has been honoured in full. Bill of exchange and discounting charges will be invoiced separately and are payable in full immediately.
- 7.5 The purchaser shall only have a right of setting-off, even when claims based on defects or counter-claims have been made, with respect to counter-claims which are accepted or undisputed. The purchaser shall only be entitled to exercise a right of retention when his counter-claim is based on the same purchase contract.

8 Retention of title

- 8.1 All goods supplied remain the property of the seller ("goods subject to retention of title") until all payments owed under the terms of the purchase contract are received in full. The goods supplied only become the property of the purchaser when he has fulfilled his entire obligations resulting from the business relationship, including supplementary charges, entitlements to damages and cashing of cheques and bills. In the case of payment by the cheque and bill method, retention of title in all the forms listed here will not expire on cashing of the cheque, but only when the bill is honoured.
- 8.2 The purchaser is to inform us immediately in writing of all seizure by third parties, and in particular of compulsory enforcement measures and other impairments to his property. The purchaser is to reimburse us for all damages and costs which arise from an infringement of this obligation and from actions necessary to protect the goods from seizure by third parties.
- 8.3 Should the purchaser fail to fulfil his payment obligations in spite of receiving a reminder from ourselves, we may require the goods subject to retention of title which are still our property to be surrendered to us without setting any further period of grace. The transport costs incurred shall be borne by the purchaser. The attachment of the goods subject to retention of title by ourselves shall always constitute withdrawal from the contract. We shall be entitled to sell the goods subject to retention of title on their return. The proceeds from the sale will be set off against our unsettled claims.

9. Purchaser's claims based on defects

- 9.1 The purchaser's rights in the case of defects of quality and defects of title (including incorrect deliveries and shortfalls, and incorrect installation or defective installation instructions) shall be governed, unless otherwise stipulated below, by the provisions of the law. None of this shall in any case prejudice the special statutory regulations covering final delivery of the products to a consumer as set out in Sections 478 and 479 of the German Civil Code (BGB).
- 9.2 The basis of the liability for defects shall be above all the agreement reached concerning the quality of the products. The product descriptions (including those of the manufacturer) which were provided to the purchaser before he placed his order or which were adopted in the contract in the same way as these General Terms and Conditions shall constitute agreements on the quality of the products when they are designated as such.
- 9.3 The purchaser's claims based on defects shall be dependent upon him having fulfilled his statutory obligations to examine the products and report defects (Sections 377 and 381 of the German Commercial Code (HGB)). Should a defect become apparent during examination or subsequently, it is to be reported to us in writing without delay. Independently of this obligation to examine the products and report defects, the purchaser is to report obvious defects (including incorrect deliveries and shortfalls) in writing without delay, and no later than one week after delivery. Should the purchaser fail to perform an orderly examination and/or report defects, we shall bear no liability for the unreported defects.
- 9.4 If the objects delivered are defective, we may first opt to effect a cure either by rectifying the defect (reworking) or by supplying objects without defects (replacement delivery). This shall not prejudice our right to refuse the selected method of cure when the legal conditions for such refusal are fulfilled.
- 9.5 We shall be entitled to make the cure owed dependent on the purchaser paying the purchase price due. The purchaser shall however be entitled to retain a reasonable portion of the purchase price in proportion to the defect.
- 9.6 The purchaser is to give us the necessary time and opportunity to effect the cure owed, and in particular to hand over the products which have been found defective for test purposes. In the case of a replacement delivery, the purchaser is to return the defective objects to us in accordance with the provisions of the law.
- 9.7 The expenses required for the purposes of testing and effecting a cure, including in particular transport, travel, labour and material costs, shall be borne by ourselves when there is actually a defect. Should, however, a request by the purchaser for defects to be rectified prove unjustified, we may require the purchaser to reimburse us for the costs incurred.
- 9.8 If the cure fails or a reasonable period to be set by the purchaser for the cure expires without result or such period is dispensable under the terms of the law, the purchaser may withdraw from the purchase contract or reduce the purchase price. There shall however be no right of withdrawal in the case of a minor defect.
- 9.9 Claims by the purchaser for damages or compensation for futile expenditure shall only be entertained as provided for in section 10 and are for the rest excluded.

10. Other liability

- 10.1 Unless otherwise stipulated in these General Terms and Conditions, including the provisions below, we shall be liable in accordance with the relevant provisions of law for infringement of contractual and non-contractual obligations.
- 10.2 We shall be liable for damages – on whatever legal grounds – in the cases of malicious intent and gross negligence. In the case of ordinary negligence, we shall only be liable
- for damages resulting from fatalities, personal injury or damage to health,
 - for damages resulting from infringement of a material contractual obligation (an obligation whose fulfilment makes the orderly implementation of the contract possible in the first place and compliance with which is and can be normally expected by the parties); in such a case our liability shall however be limited to compensation for the foreseeable loss or damage which typically occurs.
- Further claims for damages are excluded.
- 10.3 None of the above shall prejudice any liability for fraudulent concealment of a defect, the provision of a guarantee or the acceptance of a procurement risk, liability under the German Product Liability Act and under other mandatory provisions of the law.
- 10.4 The above exclusions and limitations to liability shall apply to the same extent to our managers and employees, other agents and subcontractors.
- 10.5 The above stipulations are not associated with any reversal of the burden of proof.

11. Limitations

- 11.1 In deviation from Section 438, paragraph 1, no. 3 of the German Civil Code (BGB), the general period of limitation for claims based on defects of quality and defects of title shall be one year from delivery.

- 11.2 If, however, the product is a building structure or an object which has, in accordance with its normal purpose, been used for a building structure and has caused the defectiveness of that building structure (construction material), the period of limitation shall be 5 years from delivery as provided for by the statutory regulation (Section 438, paragraph 1, no. 2 of the German Civil Code (BGB)). None of the above shall prejudice the special statutory regulations for real rights of third parties to return of the object purchased (Section 438, paragraph 1, no. 1 of the German Civil Code (BGB)), fraud on the part of the seller (Section 438, paragraph 3 of the German Civil Code (BGB)) and recourse claims on suppliers on final delivery to a consumer (Section 479 of the German Civil Code (BGB)).
- 11.3 The above periods of limitation set down in purchasing law shall also apply to contractual and non-contractual claims for damages by the purchaser which are based on a defect in the products, unless application of the regular statutory period of limitation (Sections 195 and 199 of the German Civil Code (BGB)) would lead in an individual case to a shorter period of limitation. In no case shall any of the above prejudice the periods of limitation set down in the German Product Liability Act. The statutory periods of limitation shall apply exclusively to claims for damages by the purchaser under the terms of section 10 above.
- 12. Data processing**
The purchaser is in agreement with our processing, and in particular storing or transmitting to a credit bureau, data on the purchaser received in connection with the business relationship for the fulfilment of our own commercial purposes, within the terms of the German Data Protection Act, to the extent that this takes place within the context of the purpose of the contract or is necessary to safeguard our legitimate interests, and there is no reason to assume that legitimate interests of the purchaser in precluding such processing, and in particular transmission, will prevail.
- 13. Concluding provisions**
- 13.1 These General Terms and Conditions and all legal relationships between ourselves and the purchaser shall be exclusively governed by the law of the Federal Republic of Germany, excluding the provisions of the UN Convention on Contracts for the International Sale of Goods (CISG).
- 13.2 If the purchaser is a merchant as defined by the German Commercial Code (HGB), a corporate entity established under public law or a special fund under public law, the exclusive venue for all disputes – including international disputes – arising directly or indirectly from the contractual relationship shall be a competent court at the location of our registered office in Kaarst. We shall however also be entitled to bring actions against the purchaser at the purchaser's general place of jurisdiction.
- 13.3 Amendments to contracts by individual agreements shall require no particular form to be effective. For the rest, amendments and additions to these General Terms and Conditions and supplementary agreements shall only be effective if made in writing. This shall also apply to any waiver or cancellation of this clause requiring written form.
- 13.4 Should any of the above provisions be or become ineffective, this shall not affect the validity of the remaining provisions. The parties shall be obliged to replace the ineffective provision with a stipulation which approximates to it as closely as possible in its commercial effect.