

# General Conditions of Sales and Delivery (GTCD) of Hellmut Springer GmbH & Co. KG

## 1. General Provisions, Scope of Application

- (1) Our contract partners are herein referred to as "Purchasers", independently of their designation in the respective Contract.
- (2) Unless agreed otherwise, these General Terms of Delivery ("GTCD") shall apply to all of our - including future - deliveries of goods and provisions of services to business partners. The Purchaser accepts these GTCD by placing an order and in any event by accepting delivery of an order. We hereby reject any contrary or differing general terms and conditions of the Purchaser. They shall neither become terms of the Contract through the acceptance of the order, nor through any other implied act, even if this occurs with our knowledge of contrary terms and conditions.
- (3) If particular conditions are agreed for certain orders/contracts, these GTCD shall be subordinated and supplementary apply only to the extent that they do not conflict with the particular conditions.

## 2. Offers, Conclusion of the Contract

- (1) Our offers and prices are non-binding. Changes and additions are reserved.
- (2) Orders shall only be deemed accepted upon our written confirmation or execution. Our invoices shall be regarded as written order confirmation.

## 3. Prices

- (1) Unless agreed otherwise, our prices are calculated upon on the material and wage costs applicable on the day of the offer or the price list applicable at this time. All prices published by us may therefore be changed at any time without notice. All prices quoted by us are valid for fourteen (14) calendar days, unless otherwise stated in writing. All prices are in EURO ex works (EXW INCOTERMS 2010), exclusive of the relevant VAT required by law as well as exclusive of transport and packaging. All prices for the Products will be as specified by us or, if no price has been specified or quoted, will be our price in effect at the time of shipment.
- (2) All prices are subject to adjustment on account of specifications, quantities, raw materials, special packaging, cost of production, shipment arrangements or other terms or conditions which are not part of Seller's original price quotation. The Seller reserves the right to designate minimum order quantities and/or minimum handling charges for any products.
- (3) If the order or service is fulfilled or provided later than 4 months after the conclusion of the Contract, we shall be entitled to adjust the prices to the extent of higher costs for wages and/or materials having been incurred.

## 4. Delivery, Delivery Period, Delay in Delivery, Default of Acceptance

- (1) Delivery dates and periods shall only be binding for us if we have expressly confirmed them in writing as being a fixed delivery date, correct and timely self-delivery reserved.
- (2) Delivery periods shall commence upon the conclusion of the Contract, the start assumes timely and proper fulfillment of the obligations of the Purchaser. Defence of lack of performance of the contract reserved.
- (3) In the event of a late, deficient, quantitatively inadequate or non-performed service by the preliminary supplier or in the event of the procurement of goods being reasonably unacceptable for us, and in the event of force majeure, labour disputes, interruptions of operations not caused by anyone's negligence, riots, measures taken by public authorities and other unforeseeable, extraordinary events not caused by our negligence and affecting our business or the business of a preliminary supplier, of which we shall notify the Purchaser, we shall be entitled to extend the delivery dates and periods to an appropriate extent or rescind the Contract as a whole or in part. If the delivery time is extended or we are exempted from our delivery obligation, the Purchaser may not derive any claims for damages from this provided neither we nor a preliminary supplier are at fault. In the event of such a postponement of the service by more than 4 months, the Purchaser may rescind the Contract. This shall not affect any other rights of rescission-
- (4) If the Purchaser is in default of acceptance, or if he culpably violates other obligations to cooperate,

we are entitled to demand the replacement of damages which result, including any additional expenditure. In this case the risks of an accidental loss or an accidental deterioration of the goods also transfers to the Purchaser at the point at which the Purchaser falls into default of acceptance.

- (5) If we default in delivery for reasons for which we or our vicarious agents are responsible, we shall be liable (i) in the event of intent or gross negligence or (ii) if the default in delivery for which we are responsible is based on the breach of an essential contractual obligation (see Clause 10 below). In all other cases our liability is limited to damage which could reasonably foresee and which typically occurs in connection with the particular breach in question in any particular case.
- (6) In the event of non-compliance with agreed delivery dates or deadlines the Purchaser shall be entitled - except in case of fixed-dated purchases - to cancel the order only if it has provided us with a further reasonable deadline of at least 3 (three) weeks for delivery which is given in connection with a declaration that it will refuse to accept any delivery after the expiry of the deadline.
- (7) If we are in default and the Purchaser incurs damage or loss as a result of this, the Purchaser's claims for default damage are limited to a lump sum amount of 0.5% for each full week of the delay and in any event for all delays taken together to 5% of the value of the part of the overall delivery that cannot be used in good time or in accordance with the terms of the Contract as a consequence of the delay. Default damage in excess of these limitations will not be compensated. This restriction shall not apply however if we have caused the delay intentionally. In any event, we reserve the right to show that the delay caused either no damage or that the damage occurred is substantially lower than the lump sum. In this case only the actual lower damage will be compensated. The Purchaser may only rescind the Contract in accordance with the statutory provisions if we are responsible for the delay in the delivery.
- (8) Deliveries in installments shall be admissible provided this is not unreasonable for the Purchaser.

#### **5. Shipment, Passing of the Risk, Packaging, Intra-Community Supply**

- (1) Unless otherwise agreed the selection of the means of transportation and the transportation route is conducted according to our discretion without being responsible for the fastest and cheapest way.
- (2) The delivery shall be carried out EXW INCOTERMS 2010 from the place stated by us for the account and at the risk of the Purchaser. The risk of the accidental perishing or loss or accidental deterioration of the item shall pass upon its delivery to the Purchaser. If the goods are ready for shipment and the shipment or taking delivery of the goods is delayed for reasons for which we are not responsible, such risk shall pass upon notification of readiness for shipment to the Purchaser. In the event of shipment, such risk shall pass to Purchaser at the latest upon delivery to our own or third party means of transport of our choice.
- (3) Palettes, containers and other reusable packaging shall remain our property and must be returned to us immediately free of charge by the Purchaser. Transport packaging and all other packaging shall not be taken back. The Purchaser is obliged to provide for the disposal of such packaging at his own expense.
- (4) The Purchaser is responsible for additional costs for express shipping and for the mailing costs for small item deliveries.
- (5) In case of deliveries into other EU member states ("Intra-Community Supply") the Purchaser is obliged to support us with any reasonable assistance in order to prove the Intra-Community Supply. In particular, we can request a signed and dated confirmation of the Intra-Community Supply containing at least: name and address of consignee, quantity and commercial description of the goods and place and date of receipt of goods. If the Purchaser does not comply with the aforesaid cooperation obligation, the Purchaser shall be liable for any damages resulting thereof, especially shall compensate any value added tax (VAT) imposed on us.

#### **6. Payment, Right of Set-off, Right of Retention**

- (1) Unless otherwise agreed in writing, our invoices for purchase price for products sold or for fees for services delivered are payable upon delivery of the respective product or of service which materially comply in terms of quality and quantity with the respective service agreement. Irrespective of the above, our invoices are payable without deduction 30 (thirty) days after the date of the invoice by transfer to one of our bank accounts.

This shall also apply to invoices for partial deliveries. We reserve the right to reject payment by cheque. In the event that we should voluntarily accept cheques, these are not accepted instead of the cash due, but only as a courtesy on our part and subject to us irrevocably receiving actual payment on account of the cheques. Ancillary costs, in particular banking charges, shall be borne by the Purchaser.

- (2) The Purchaser shall be in default in payment as from the time of expiration of the date for payment, unless the Purchaser is not responsible for the default. In the event of a default in payment, the Purchaser must pay default interest to the amount of 10%, however at least 6 percentage points above the basic interest rate. If the interest provided under sentence 1 is more than 6 percentage points above the basic interest rate, the Purchaser shall be free to prove that the damage or loss caused by his default has not been incurred or not been incurred to this amount. The assertion of any greater damage or loss caused by default shall not be excluded.
- (3) If the Purchaser fails to comply with the agreed terms of payment or we become aware of circumstances that point to a deterioration in the state of affairs of the financial situation of the Purchaser, all of our accounts receivable shall become due immediately.
- (4) The Purchaser may only set-off claims if his counterclaims are undisputed, in particular, if we have recognized and accepted the counter-claim in writing, or have been confirmed by a final court decision. The same shall be true for rights of retention invoked by Purchaser.

## **7. Retention of Title and Assignment of Future Claims**

- (1) We shall retain title to the goods delivered ("reserved goods") until such time as all our actual and future claims, for any legal reason whatsoever, including the respective balance arising from any form of current account between the parties, are satisfied. Any processing or transformation of reserved goods shall be carried out for us as the manufacturer, however, without any obligation for us. In the event of the processing or combining of reserved goods with other goods not belonging to us, we shall be entitled to the co-ownership of the new product at a ratio of the gross invoiced value of the reserved goods to the current market value of the other goods used. If the Purchaser acquires the sole ownership of the new product, he hereby transfers to us co-ownership of such a product to the ratio of the gross invoiced value of the reserved goods used. Any new products shall be kept for us free of charge by the Purchaser with the reasonable care of a merchant. The Purchaser shall only be entitled to resell the reserved goods or any products resulting from the processing in the ordinary course of business after agreeing to the retention of title. He is not entitled to pledge reserved goods or transfer ownership by way of security. The Purchaser hereby assigns to us in advance all claims including all ancillary rights arising from the sale or other use of the reserved goods. In the event of the sale or other use of the reserved goods with items in which third party rights exist, only the partial amount corresponding to the gross invoiced value of the reserved goods used shall be assigned to us. The debt claims assigned shall serve as security for all claims under Clause 7 (1).
- (2) The Purchaser shall be authorized to collect the debt claims assigned. In the event of default in payment, suspension of payments, petition for or the commencement of insolvency or composition proceedings or in the event of otherwise dwindling assets of the Purchaser, as well as in the event of a failure to comply with the duties pertinent to the Purchaser arising from the retention of title, we may revoke the authorization to collect the debt claims and demand that the Purchaser notifies us of the debt claims assigned and their debtors, furnishes all information necessary for the collection, hands out the related supporting documents and notifies the debtor of the assignment. Subject to the same preconditions, we are entitled to revoke our assent to the resale and/or processing of the reserved goods and to collect the reserved goods immediately, to enter the business premises of the Purchaser for this purpose and to utilize the collected goods at our discretion. Further rights on our part shall not be affected by our taking possession of the reserved goods. The taking back of the reserved goods shall not be deemed to constitute a rescission of the Contract.
- (3) The Purchaser must notify us before seizures of the reserved goods or of the claims assigned to us by third parties. The Purchaser must reimburse us for the costs incurred to avert the encroachment by third parties.
- (4) If the realizable value of the securities existing for us exceeds our total debt claims by more than 10%, upon the demand of the Purchaser, we are obliged to release the surplus securities; the choice of the securities to be released shall be incumbent on us.

## 8. Notices of Defects

The Purchaser is obliged to inspect the goods immediately after receipt - in any case before installation. In case of re-orders also regarding similarity. Complaints about the quantities delivered and any defects must be notified in writing within 7 days after the receipt of the goods - in the event of defects not readily ascertainable upon inspection within the same 7 day period as of detection of the defect; failing this, all warranty claims shall be excluded. Our receipt of the notice of defects shall be decisive in respect of this time limit.

## 9. Warranty

- (1) Unless a longer limitation period is prescribed by a mandatory statutory provision, the limitation period for material defects shall be 1 year after the delivery of the delivery item in the case of goods sold or, if a service is provided, for which an acceptance procedure applies, one year after acceptance of the performance. This shall also apply to contractual claims for damages for consequential harm caused by a defect, unless claims in tort are asserted. The time limitation does not apply to damages caused intentionally.
- (2) Damage claims of the Purchaser can only be asserted if the Purchaser has complied with its statutory inspection obligations (sec. 377, 381 Commercial Code). Items which are to be integrated into other items or products are in any case to be inspected prior to such integration. In case of a defect of the delivery item, we will remedy the defect or carry out a replacement delivery in exchange for the return of the deficient goods or parts thereof at our discretion. Necessary costs of such rectification or replacement, such as costs for labor, material and transportation, will be assumed by us to the extent these costs are not increased due to the subsequent transfer of such goods to another location than the Purchaser's registered place of business, unless such transfer is in line with the intended use of such goods. The Purchaser must notify us of any claims in respect of a delivery item. If we are not prepared or not in a position to remedy the defect/carry out a replacement delivery, or this is delayed beyond reasonable periods for reasons for which we are responsible or the remedy of the defect/replacement delivery is unsuccessful in another way, at its choice the Purchaser may demand a reduction of the purchase price or rescind the Contract. The remedy of the defect/replacement delivery shall only be deemed as unsuccessful if and as soon as 2 periods set for us for such performance have expired without result. The preconditions for the exercise of the right of rescission shall be determined in accordance with § 323 BGB (German Civil Code).
- (3) Warranty claims and claims for damages for goods sold or work for hire or services provided shall be excluded to the extent that deteriorations of the delivery item are due to natural wear and tear through proper use or improper handling of the delivery item. This shall apply in particular to such deteriorations that occur due to improper repairs by the Purchaser or an unauthorized third party. The warranty shall exclude defects to which the delivery item is not already subject at the time of the passing of the risk as well as for defects that are based on false handling, unworkmanlike assembly or installation, failure to follow operating and/or servicing instructions, use of operating substances not corresponding to the original specification specified by us, or natural wear and tear. The Purchaser must demonstrate and prove that the assembly, installation and maintenance of the delivery item were carried out competently.
- (4) If a defect is based on a deficient assembly instruction, our warranty obligation shall only exist if the assembly and the installation of the delivery item were carried out competently in all other respects. The Purchaser must demonstrate and prove that the assembly or the installation was carried out competently.

## 10. Liability

- (1) We are liable for damages - apart from expressly warranted qualities or in case of a guarantee - only in the case of intent or gross negligence. We are not liable for damages caused by a deficient delivery item due to ordinary negligence. This limitation on liability shall not apply if we intentionally or negligently breach a material obligation of the Contract. In that case, liability is limited to damage which could reasonably be foreseen and which typically occurs in connection with the particular breach in question in any particular case.
- (2) In other respects, the liability for damages shall be excluded; in this respect, we are in particular not liable for damage or loss that has not arisen in respect of the delivery item. If the damage or loss is

covered by an insurance contract concluded by the Purchaser for the case of damage or loss concerned (excluding fixed-benefit insurance), we shall only be liable for the disadvantages for the Purchaser in respect of this insurance, e.g. higher insurance premiums or interests paid up to the adjustment of loss by the insurer.

- (3) The limitation of liability shall not apply in cases of mandatory statutory liability, in particular to any liability under a Product Liability Act, under sec. 82 GDPR and as regards liability for any damage resulting from injury to life, body or health and in so far as we have given a specific guarantee for an item.
- (4) In the event of the absence of guaranteed quality, we shall only be liable to the exclusion of further rights, for damages that were supposed to be covered by the guarantee.
- (5) The quality of the delivery item shall only be considered as warranted insofar as we have given a warranty explicitly in writing. Details stated in the catalogue and in lists shall constitute no warranty or guarantee. Likewise, all details in our offers and confirmations of orders concerning dimensions, weight and other technical data shall not constitute a warranty or guarantee.
- (6) Insofar as our liability is ruled out, or limited, this also applies to the personal liability of our employees, workers, personnel, legal representatives, and agents.

#### **11. Warranty, Guarantee, Re-Order**

- (1) The quality of the delivery item shall only be considered as warranted insofar as we have given a warranty explicitly in writing.
- (2) Statements in our catalogues, printed material, mounting guidelines, repair instructions, brochures and other general information in no event and at no time constitutes a guarantee or the assumption of the procurement risk. Likewise, all details in our offers and confirmations of orders concerning dimensions, weight and other technical data shall not constitute a warranty or guarantee.
- (3) For repeat orders of the same goods the attributes of the last order executed for this item shall only be deemed guaranteed for the new item if we have given a warranty explicitly in writing (see 12. (1)).

#### **12. Use of Software**

- (1) If software is contained in the scope of the delivery, the Purchaser shall be granted a nonexclusive, non-transferable right limited in terms of time in accordance with the provisions on the scope of the delivery to use the software including its documentation in connection with the delivery item for its own, internal business purposes. Use of the software in connection with more than one delivery item shall be prohibited. The granting of sub-licenses as well as any distribution of the software shall be inadmissible.
- (2) The Purchaser may only reproduce, alter, translate the software or convert the object code to the source code to the extent permitted by mandatory law (§ 69a et seq. German Copyright Act (UrhG)). Before accessing the software source code in order to provide interoperability with other software, the Purchaser shall grant us a reasonable period to provide the Purchaser with the required interface information. The Purchaser undertakes not to remove or delete manufacturer's information - in particular copyright notations - or change these without our express prior written consent.
- (3) We reserve and retain all other rights to the software and the documentation including copies.

#### **13. Confidentiality**

- (1) The Purchaser and we shall treat all information obtained from the other party confidentially. This obligation shall not apply to information that was already known to the receiving party by justified means without an obligation to treat it as confidential upon receipt, or that is subsequently known by justified means without an obligation to treat it as confidential or which - without a breach of contract by one of the parties - is or becomes generally known.
- (2) We reserve title and any rights to the supporting documents or data/data carriers made available. Reproductions and the passing on of such supporting documents or data/data carriers shall only be admissible with our prior written consent.
- (3) The above regulations shall also apply if no contract is concluded.

#### **14. Rescission Right**

The Purchaser has the right to rescind the contract within the scope of the legal provisions only when we are liable for the violation of duty; however in cases of defects it rests with the statutory condition. If breach of duty exists, the customer, upon our request, must declare within an appropriate period of time if it waives the right to withdraw from the contract or insist on delivery.

#### **15. Cancellation and Redemption**

- (1) We are not obliged to accept any returns of goods free from defects and perfectly delivered, unless we agreed on this particular redemption in writing.
- (2) Custom-made products and special cut-to-size orders are excluded from redemption. Filled starter batteries, fluids as well as all electronic components can not be returned either.
- (3) For restocking returns confirmed by us in writing we shall debit related costs incurred for the return of goods which are fixed by us and which are agreed in the individual case as a redemption condition.
- (4) Orders in process may be canceled only with our written consent and upon payment of our cancellation charges.

#### **16. Changes to orders, delivery content and contractual content, article numbers**

- (1) Orders in process may not be changed except with our written consent and upon agreement by the parties as to an appropriate adjustment in the purchase price therefor.
- (2) Changes in design or shape, deviations in the colour shade, and changes in the delivery details and scope from the manufacturer during the delivery time are reserved. This is possible as long as the changes or deviations are reasonable for the customer, taking into account our interests.
- (3) Should we and/or our manufacturer/supplier use numbers or symbols to identify an order or an item ordered, no rights can be derived from this fact alone in respect of the concrete definition of the item or delivery content.

#### **17. Export controls**

- (1) When dealing with us, the Purchaser undertakes to observe all applicable national, EU, and US export control provisions, including all EU or US sanctions lists (jointly referred to as export control provisions).
- (2) The Purchaser is obliged to immediately inform us in writing of any circumstances which come to the Purchaser's knowledge after the conclusion of the contract which might lead to the assumption of a potential or actual infringement of export control provisions.

#### **18. Services**

- (1) Should we inside or outside the scope of a contract be requested to install, deinstall or commission aggregates, hydraulic or pneumatic circuits (with or without adjusting connections) the following terms apply unless specifically agreed in writing when concluding the contract.
- (2) The payment is calculated according to the flat-rate or hourly rate stated in the service contract. If not specifically agreed otherwise, our up-to-date flat-rate-list apply.
- (3) Should set-up, installation, deinstallation or commissioning be delayed due to reasons lying within the customer's sphere of risk (e.g. construction-related delays) the customer shall bear the costs for waiting time and additionally travel expenses of our staff if required in an adequate amount. If the delay lasts longer than 30 (thirty) days, we are also entitled to demand the entire remuneration in advance.
- (4) The customer has to inform us prior to the start of the services about the exact local conditions. Furthermore, he has to point out to us any special features (be it of the construction site, be it of the object). The agreed remuneration is based on the unimpeded access to the site on which the services will be provided by us.

#### **19. Advice, Construction Changes**

- (1) Unless otherwise agreed in writing, our advice and, if necessary, project preparations shall be car-

ried out non binding and without giving rise to any legal obligations. As regards warranty and liability, the above-mentioned provisions shall apply mutatis mutandi.

- (2) We reserve the right to carry out technical structural changes at any time. However, we shall be under no obligation to carry out such changes to contract goods already delivered.

## **20. Place of Performance, Place of Jurisdiction, Applicable Law**

- (1) The place of performance for deliveries or performance is the Place of Delivery we specify. The place of performance for payments is Stuhr, Germany.
- (2) The place of jurisdiction for all disputes arising from the business connection is Bremen, Germany, we may however also bring a legal action at the principal place of business of the Purchaser.
- (3) For all crossborder deliveries Bremen is the exclusive venue for any court proceedings in connection with the respective contract (Art. 23 EuGVVO or Art. 17 EuGVÜ). We reserve the right to sue the Purchaser at its place of general jurisdiction or in any other court having jurisdiction over the Purchaser under EuGVVO or EuGVÜ.
- (4) German law shall apply to all legal relations between the parties with the exclusion of the conflict of laws provisions and the UN Sales Convention on Contracts for the International Sale of Goods (CISG). The customary commercial clauses must be interpreted according to the respective INCOTERMS of the International Chamber of Commerce (ICC) valid at the time of the conclusion of the contract.

## **21. Written form, salvatory clause**

- (1) Subsidiary agreements, modifications and amendments are only valid if they are agreed in writing.
- (2) Should a provision in these GTCP and the other agreements reached be or become invalid, the validity of the remaining provisions of these GTCP shall not be affected.
- (3) We point out that we store personal data in compliance with the statutory provisions and process this in connection with business transactions.

**Hellmut Springer GmbH & Co. KG**

April 2019