

## General Terms and Conditions (Sales): Heine + Beisswenger Stiftung + Co. KG (Version 02/2017)

### I. Applicability / conclusion of contract

1. These General Terms and Conditions (Sales) apply to all current and future agreements governing deliveries and other services and entered into with businesses, legal entities under public law and special funds under public law. The seller's terms and conditions of purchase shall not be recognised, even if we do not explicitly refute them again upon receipt.
2. Our offers are non-binding and subject to alteration. Verbal agreements, assurances, confirmations, guarantees and statements about purpose of use or application made by our employees in conjunction with the conclusion of agreements, shall be non-binding until confirmed by us in writing.
3. A written agreement is required before supplying (providing) test certificates compliant with DIN EN 10204. We are entitled to provide copies of such certificates, and to conceal the orderer and the issuer on them.
4. The Incoterms in their latest version shall govern the interpretation of commercial clauses if there is any doubt.

### II. Prices

Unless agreed otherwise, prices shall be ex-works or ex-warehouse and exclusive of shipping, value added tax and import duties. Goods are calculated 'gross for net'. Unless agreed otherwise, the fee for any DIN EN 10204-compliant test certificates agreed upon shall be €15 each.

### III. Payment and settlement

1. Payment must be made without early payment discount in such a way that the amount is available to us on the due date. This applies even if the test certificates compliant with DIN EN 10204 agreed on for the delivery are missing or arrive late. The buyer shall cover the cost of payment transactions. The buyer shall only have a right to withhold and offset amounts to the extent that its counter-claims are uncontested or determined without further legal recourse, and if they are based on the same contractual relationship with the seller and/or the counter-claims entitle the buyer to refuse performance as defined in § 320 BGB (German Civil Code).
2. If payment is not made on time or is delayed, we shall charge interest at nine percentage points above the base rate, unless higher interest rates have been agreed on. We shall also levy an arrears fee of €40. We reserve the right to assert further damages due to delay.
3. If, when the agreement is concluded, it becomes evident that our right to payment is at risk because the buyer is not in a position to pay, or if the buyer begins to fall into arrears by a significant sum, or if other circumstances arise that suggest to us that the buyer has become much less able to pay, then we can refuse to perform preliminary work. Furthermore, in such cases we are entitled to call in any receivables arising from the current business relationship with the buyer that are not yet due.
4. Any early payment discount agreed on shall apply only to the invoice value, exclusive of shipping and assumes that all of the buyer's due liabilities have been settled in full at the time the discount is applied. Early payment discount periods shall begin on the invoice date, unless agreed otherwise.

### IV. Performance of delivery, delivery periods and deadlines

1. Our duty to deliver is conditional upon our being supplied contractually correctly, properly and punctually; in the case of import business, it is also conditional upon receiving monitoring documents and import permits on time.
2. Delivery times are approximate. Delivery periods begin on the date we confirm an order and apply only if all of the details of an order are clarified in good time, and if the buyer fulfils all of their commitments punctually, such as furnishing any official certificates, providing letters of credit and guarantees, making down-payments and providing diagrams approved by the buyer.
3. What matters when it comes to delivery periods and deadlines is the date on which goods are dispatched from the works or warehouse. If the goods cannot be sent off in time and it is not our fault, then stating that they are ready to send is enough to meet the deadline.
4. The buyer must ensure that the goods are inspected without difficulty and must notify us in good time of anything that might hinder delivery. The buyer must unload immediately and properly. If we or somebody else helps, then we do so without legal obligation and at the buyer's risk.
5. Uncontrollable events (force majeure) entitle us to postpone delivery by the duration of the hindrance and a reasonable ramp-up time. This even applies if such events occur when things are already delayed. Uncontrollable events include measures involving currency and trade law and other official activities (such as anti-dumping and compensatory investigations, the ordering of a customs assessment and similar), strikes, lock-out, operational interruptions for which we are not responsible (such as fire, machinery and roller breakdown, shortage of raw materials or energy), the obstruction of transport routes, delays in import and customs clearance and any other circumstances that significantly hinder deliveries and performance or make them impossible or economically unviable, without us being responsible for them. It does not matter whether the circumstances occur at our premises, the delivery factory or any supplier of ours. If any of the aforementioned events make it unreasonable to expect a party to the agreement to perform, then that party may withdraw from the agreement by issuing an immediate written declaration.

### V. Retention of title

1. The goods supplied shall remain the seller's property until purchase price has been paid in full. The buyer is obliged to take the steps necessary to uphold the

retention of title (or any similar safeguarding rights in the country in which it is based or in the destination country, if different) and shall provide evidence of this on our request.

2. The following additional terms shall apply inasmuch as permitted by the law of the country in which the goods are found.
  - a. The goods supplied shall remain our property (goods subject to retention of title) until all outstanding accounts have been settled, in particular that which is due to us on account in connection with the business relationship (account retention). This shall apply to future and conditional accounts receivable and if payments are made onto specially designated outstanding accounts. This account retention shall finally cease when all of the accounts receivable that remain open and are encompassed by the account retention are settled at the time of payment. However, the account retention does not apply to advance payment or cash transactions, which are dealt with as and when they come up.
  - b. Goods subject to retention of title are reworked and processed on our behalf as their manufacturer as defined in § 950 BGB, without placing us under any obligation. Reworked and processed goods are considered goods subject to retention of title as defined in No. 2 a. If goods subject to retention of title are processed, combined or mixed with other goods by the buyer, then we shall become co-owners of the new object and our share shall be calculated by the ratio between the invoice value of the goods subject to retention of title and the invoice value of the other goods used. If our ownership ceases due to combining or mixing, then the buyer shall hereby transfer to us the rights of ownership of the new object due to the buyer to the extent of the invoice value of the goods subject to retention of title, and shall guard these rights of ownership on our behalf without charge. Our rights to co-ownership shall be considered goods subject to retention of title as defined in No. 2 a.
  - c. The buyer may only sell goods subject to retention of title in conventional business transactions under its normal terms and conditions of business, provided the buyer is not in arrears, and on the condition that accounts receivable generated by selling the goods are transferred to us in accordance with d) to e). The buyer is not entitled to dispose of goods subject to retention of title in any other way.
  - d. Accounts receivable generated by selling on goods subject to retention of title are hereby ceded to us together with any securities which the buyer acquires for the accounts. They shall serve as security to the same extent as the goods subject to retention of title. If goods subject to retention of title are sold by the buyer together with other goods not sold by us, then the accounts receivable arising from selling them on shall be ceded to us in the ratio of the invoice value of the goods subject to retention of title to the invoice value of the other goods sold. If goods in which we hold co-ownership are sold, then we shall be ceded a portion corresponding with our co-ownership share.
  - e. If goods subject to retention of title are installed in a property by the buyer, then the buyer shall hereby assign to us the associated right to remuneration up to the value of the goods subject to the retention of title, together with any ancillary rights including the right to a legal mortgage. Such a right shall have priority ranking over all others. We accept this assignment.
  - f. If the Buyer has sold the claim as part of a true factoring transaction, then our claim shall become payable immediately and the buyer shall assign to us the claim against the factor that replaces it and hand over any sales proceeds to us without delay. We accept this assignment.
  - g. The buyer is entitled to collect accounts receivable generated by the sale. This right to collect shall cease if we revoke it, and in any event if payment is delayed, if a bill is not paid or if insolvency proceedings are applied for. We will only exercise our right to revoke if, once the agreement has been concluded, it becomes evident that our payment claims arising from this or other agreements with the buyer are at risk because the buyer is no longer sufficiently able to pay. If we request it, the buyer is obliged to inform its customers immediately that it has ceded its accounts receivable to us, and at our request and at any time to provide us with a complete list of the claims to which we are entitled together with the names and addresses of its customers, the amount of the individual claims, dates of invoice and so on, and to provide us with all the information we need to pursue these assigned claims; and to allow us to check this information.
  - h. The buyer must inform us immediately of any attachments or other impairments by third parties. The buyer shall carry any costs incurred by releasing the seizure and sorting out and transporting the goods subject to retention of title, provided these costs are not reimbursed by somebody else.
  - i. The buyer shall keep the goods subject to the retention of title for us, free of charge. The buyer shall insure them at normal levels of cover against normal risks such as fire, theft and water damage. The buyer hereby assigns to us any compensation to which it is entitled from third parties as a result of the aforementioned type of damage, up to the value of the goods invoices. We accept this assignment.
  - j. If the invoice value of existing securities exceed the secured accounts receivable including secondary receivables (interest, costs, etc.) by a total of more than 50 percent, then we shall be obliged to release the securities of our choice if the buyer asks us to.

### VI. Weights

1. Weights shall be based upon the weighing which we or our suppliers perform. Weights shall be proven by presenting the weighing note. We may also ascertain the weight by theoretical means, without weighing, using the length and recognised statistical methods. We are further entitled to increase the theoretical weight by 2½% (commercial weight) to compensate for rolling and thickness tolerances.

2. Unit quantities, bundle quantities and similar specified in the dispatch note are not binding for goods calculated by weight. If item-by-item weighing is not normally performed, then the total weight of the shipment is what counts. Any deviation from calculated item-weights shall be divided up among the items pro rata.

## VII. Test certificates / Inspections

1. A written agreement is required before supplying test certificates ('reports') compliant with EN 10204. We are entitled to supply copies of such certificates. The fee for test certificates shall be based on our price list or the issuer's price list (delivering factory), unless expressly agreed otherwise.
2. If an inspection is arranged, then it has to happen at the delivery factory or our warehouse as soon as notification has been given that we are ready for inspection. The buyer shall ensure that we are able to appoint the inspection company of their choice, on their behalf and at their or their customer's expense. Unless agreed otherwise, this permission is granted as soon as the inspection company is stated in the order.
3. The cost of labour for inspection shall be paid for by the buyer and the material inspection costs will be calculated and invoiced to the buyer according to our price list or the delivery factory's price list.
4. If inspection is not done or if it is late or incomplete and we are not at fault, then we are entitled to ship the goods without inspection, or to store them at the expense and risk of the buyer, and invoice the buyer accordingly.

## VIII. Call orders, ongoing deliveries

1. In the case of contracts involving ongoing deliveries, we must be supplied with call orders and type categories for approximately equal monthly quantities, otherwise we are entitled to do this ourselves as we reasonably see fit.
2. If a call exceeds the total contractual quantity then we are entitled – but not obliged – to deliver the excess quantity. We can invoice the excess quantity at the prices valid at the time of calling or delivery.

## IX. Shipment, transfer of risk, packaging, partial delivery

1. We shall decide on the shipment route and method as well as the haulier and shipper. Our deliveries shall be from our offices unless agreed otherwise in writing.
2. Goods notified as ready to ship according to the contract must be called immediately, otherwise we are entitled, following a warning, to either ship them at the buyer's expense and risk, or, if we so choose, to store them as we see fit and invoice them immediately.
3. If transport by the intended route or to the intended place at the intended time becomes impossible or severely hampered and we are not at fault, then we are entitled to deliver by another method or to another place; the extra expense incurred shall be carried by the buyer. The buyer will be given an opportunity to respond beforehand.
4. In the case of call orders, the risk is transferred to the buyer as soon as the goods are made ready for collection. Apart from that, the risk is transferred to the buyer – including the risk of confiscation of the goods – once the goods are handed over to a haulier or shipper, and in any event as soon as they leave the warehouse or delivery factory, regardless of the transaction type, and including carriage-paid and free deliveries. We will only insure the goods on the instructions and at the expense of the buyer. Unloading and the cost thereof shall be for the buyer.
5. Goods are delivered unpackaged and not protected against rust. We will deliver packaged if agreed upon. Other than that we will package, protect and secure for transport according to our experience and at the buyer's expense. Packaging, protective and securing equipment shall be taken back to our warehouse within a reasonable time. We shall not cover the buyer's cost for return transport or for disposing of the packaging themselves.
6. We are entitled to perform partial delivery as is reasonable. We are also entitled to exceed or fall short of the agreed delivery quantities to a reasonable extent. Stating 'approximate' quantities entitles us to exceed or fall short of the amount by up to 10%.

## X. Liability for material defects

1. The internal and external properties of the goods, in particular their quality, variety and dimensions, shall be compliant with the agreed standards, and, if nothing else has been agreed on, with the DIN and EN standards valid at the time the contract was concluded; and if such standards do not exist, then according to convention and commercial practice. Reference to standards and similar regulations, test certificates compliant with reference to EN 10204 similar reports, as well as details of qualities, varieties, dimensions, weights and the suitability of the goods for particular uses do not represent assurances or guarantees, nor do declarations of conformity and related symbols such as CE and GS.
2. The statutory regulations shall apply to the inspection of goods and notification of defects, with the proviso that the duty to inspect the goods after delivery also extends to any test certificates compliant with or issued subject to EN 10204, and that we must be notified in writing about any defects in the goods or test certificates.
3. If it is intended that the goods are to be installed, then the buyer is obliged under § 377 HGB (German Commercial Code) to assess the internal properties of the goods essential for their use before installation, and to notify us immediately of any defects therein.

4. If a justified notice of defects is issued in good time, then we can choose either to rectify the defect or to supply defect-free goods (rectification). The place of fulfilment for rectification is our headquarters. If rectification does not work or is refused, then the buyer shall enjoy the statutory rights. If the defect is not major and/or if the goods have already been sold, processed or restructured, then the buyer shall only have the right to reduce the price.
5. We will only cover expenses relating to rectification to the extent that they are reasonable in each case, in particular in relation to the purchase price of the goods; and on no account if they exceed 150% of the purchase price. Other expenses, such as those relating to installing and removing the defective item, shall only be covered by us as dictated by section XI of these terms and conditions.
6. If the buyer does not immediately provide us with the opportunity to appraise the defect, and in particular if the buyer does not immediately provide us with the contested goods or samples thereof for the purpose of testing, then the buyer shall have no rights with regard to material defects.
7. If goods are sold as declassified materials, then the buyer shall have no material defect rights in conjunction with the reasons given for declassification or any defects which can normally be expected. We shall not be made liable for material defects if goods are sold as seconds.
8. The buyer's other rights are based on section XI of these terms and conditions. This does not affect the buyer's right of recourse under §§ 478, 479 BGB.

## XI. Compensation for damages and limitation

1. We – including for our executives and other auxiliary workers – shall only be liable for breaches of contractual and non-contractual duties, in particular incapacity, delay, culpability in initiating the contract and disallowed actions, in the event that we acted intentionally or with gross negligence; and in the latter case with a limit to those damages typically foreseeable for the contract when it was concluded. We shall not be liable in any other way, including for damages caused by defects or the consequences thereof.
2. These limitations do not apply in the event of a culpable breach of fundamental contractual duties if breaching them means risking that the purpose of the agreement is not achieved, or if fulfilling them is essential for the agreement to be performed properly and if the contractual partner may ordinarily assume that they will be upheld. Nor do these limitations apply to damage culpably caused to life, body or health, nor if and to the extent that we have guaranteed the properties of the sold item, nor in cases of compulsory liability under product liability law. This does not affect the rules governing evidence.
3. Unless agreed otherwise, contractual claims asserted against us by the buyer on the occasion of and in relation to the delivery of goods, including compensation claims resulting from material defects, shall lapse under limitation one year after the goods are delivered. This does not affect our liability for or the limitation of claims relating to intentional or grossly negligent breaches of duty, damage culpably caused to life, body or health, or the limitation of rights of recourse under §§ 478, 479 BGB. The statutory periods of limitation shall apply to these.

## XII. Additional terms for wage work

1. These General Terms and Conditions (Sales) shall apply analogously to wage work as well.
2. The materials given to us for processing must be accompanied by a delivery note. This must include the following minimum information:
  - a. Designation of material, quantity and net weight;
  - b. Processing required;
  - c. Testing procedure required;
  - d. Any other information or regulations needed for successful processing.
 If the minimum information is incomplete, missing or incorrect, then we shall undertake processing as we see fit.
3. Our accounts receivable arising from the order give us a contractual right of lien and retention to the materials we have received as a result of the order. A contractual right of lien and retention can also be asserted on the basis of accounts receivable connected to previously performed work, replacement deliveries and other services, provided they are connected to the subject of the order. A contractual right of lien and retention shall only apply to other claims arising from the business relationship to the extent that those claims are uncontested or if title has been granted by a court order and the ordered entity belongs to the orderer.

## XIII. Place of fulfilment, jurisdiction and applicable law

1. The place of fulfilment for our delivery and the buyer's payments is our corporate headquarters. The place of jurisdiction is either the court in Stuttgart which has subject-matter jurisdiction, or the buyer's place of jurisdiction, whichever we choose.
2. Any legal relationships between us and the buyer shall be governed by German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG) dated 11.04.1980.